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HOUSE BILL NO. 1756

Offered January 14, 2009

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A BILL to amend and reenact §§ 15.2-2703, 65.2-801, and 65.2-1203 of the Code of Virginia, relating to workers' compensation insurance; local government group health insurance pools.

Patron—Hargrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2703, 65.2-801, and 65.2-1203 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2703. Group self-insurance pools authorized.

A. Any political subdivision of this Commonwealth may, by contract with one or more political subdivisions of this Commonwealth or of another state, form a group self-insurance pool to provide for joint or cooperative action relative to their financial and administrative resources for the purpose of providing to the participating political subdivisions risk management ~~and liability~~ *services as well as* insurance coverage for pool members and employees of pool members, for acts or omissions arising out of the scope of their employment, including any or all of the following:

1. Casualty insurance, including *workers' compensation under Title 65.2, employers' liability,* general ~~and~~, professional and public officials liability coverage;

2. Property insurance, including marine insurance and inland marine and transportation insurance coverage;

3. Group life, accident and health coverages including hospital, medical, surgical and dental benefits to the employees of member political subdivisions and their dependents;

4. Automobile insurance, including motor vehicle liability insurance coverage and collision and security for motor vehicles owned or operated, as required by Title 46.2, and protection against other liability and loss associated with the ownership and use of motor vehicles;

5. Surety and fidelity insurance coverage; and

6. Umbrella and excess insurance coverages.

B. A group self-insurance pool may obtain excess insurance or reinsurance of risks, and may cede and sell the risks for coverages set forth in this section.

C. Member political subdivisions that join together for the purpose of pooling their workers' compensation liabilities pursuant to Title 65.2 shall execute a written agreement, which has been approved by the State Corporation Commission under which each member agrees to be jointly and severally liable for the other members that are also party to such agreement. In addition to the rights the pool may have under such agreements, in the event of failure of the pool to enforce such rights after reasonable notice to the pool, the State Corporation Commission shall have the right independently to enforce on behalf of the pool the joint and several liability of its members under this title and the liability of members for any unpaid contributions and assessments. The State Corporation Commission shall be entitled to recover its expenses and attorneys' fees. However, no such agreement to be jointly and severally liable, nor membership in a group self-insurance pool as defined in this section, shall relieve an employer of the liabilities imposed under Title 65.2 with respect to its employees. Members of a group self-insurance pool created pursuant to this title and licensed by the State Corporation Commission shall not be jointly and severally liable for unpaid contributions or assessments for any line of business other than workers' compensation offered by the group self-insurance pool.

D. Subject to the approval of the State Corporation Commission and with such conditions as such Commission may require, a group self-insurance association formed pursuant to § 65.2-802, consisting solely of political subdivisions, may merge with a group self-insurance pool if the group self-insurance pool assumes in full all obligations of such group self-insurance association originally licensed pursuant to § 65.2-802.

§ 65.2-801. Insurance or proof of financial ability to pay required.

A. Every employer subject to this title shall secure his liability thereunder by one of the following methods:

1. Insuring and keeping insured his liability in an insurer authorized to transact the business of workers' compensation insurance in this Commonwealth;

2. Receiving a certificate pursuant to § 65.2-808 from the Workers' Compensation Commission authorizing such employer to be an individual self-insurer;

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3. Being a member in good standing of a group self-insurance association licensed by the State Corporation Commission; or

4. *Being a member in good standing of a local government group self-insurance pool licensed by the State Corporation Commission pursuant to § 15.2-2706 to offer workers' compensation coverage.*

5. Entering into an agreement with a professional employer organization for professional employer services which includes voluntary market workers' compensation insurance for coemployees of the professional employer organization and the client company procured from an insurer authorized to transact the business of workers' compensation insurance in this Commonwealth. A professional employer organization may obtain voluntary market workers' compensation insurance in its own name for all coemployees which it shares or which are assigned or allocated to it pursuant to the agreement between the professional employer organization and the client company. The client company shall maintain separate voluntary market workers' compensation insurance insuring any and all employees of the client company not insured through the policy obtained by the professional employer organization.

B. An employer who satisfies the requirements of this section shall be certified by the Workers' Compensation Commission as an individual self-insurer and permitted to pay direct the compensation in the amount and manner and when due as provided for in this title. The Commission shall not certify an employer as a self-insurer unless it receives in such form as it requires satisfactory proof of the solvency of such employer, the financial ability of the employer to meet his obligations and the ability of the employer to pay or cause to be paid the compensation in the amount and manner and when due as provided for in this title. The Commission shall establish reasonable requirements and standards for approval of an employer as a self-insurer including, without limitation, the quality and amount of security deposits, bonds or indemnity, the amount of advance payments and reserves required, the investment of such funds, and the form and content of financial information to be submitted by the employer and the frequency of such submissions. For the purposes of any debt/equity ratio (total liabilities to net worth) minimum standard, a ratio of less than 2.2:1 shall be deemed satisfactory. The Commission shall, after notice and hearing, embody such requirements and standards and such other requirements as may be reasonably necessary for the purposes of this section in regulations. The Bureau of Insurance of the State Corporation Commission shall, at the request of the Commission, assist the Commission in establishing the reasonable requirements and standards for approval and certification of an employer as a self-insurer. The Workers' Compensation Commission may in its discretion require the deposit of a financial instrument of a specified amount from an entity approved by the Workers' Compensation Commission to secure the payment of compensation liabilities as they are incurred. The form of the instrument to be deposited shall be selected by the employer from the following list of acceptable financial instruments and may include any combination thereof so long as the amount specified by the Workers' Compensation Commission is deposited and the actual value thereof maintained: corporate surety bonds, certificates of deposit, United States government obligations, letters of credit, and cash.

C. The State Treasurer shall be the custodian of securities deposited by the employer under the requirements of this section, or under § 65.2-802, and for such services he shall receive a compensation of one-tenth of one percent per year of the amount of securities deposited with him, payable by or on behalf of such employers.

§ 65.2-1203. Awards.

A. 1. Whenever, following due investigation of a claim for compensation benefits, the Commission determines that (i) the employer of record has failed to comply with the provisions of § 65.2-801 or that a self-insured employer or its surety as required by § 65.2-801 is unable to satisfy an award in whole or in part, and (ii) the claim is compensable, the Commission shall make a provisional award of compensation benefits, or any unpaid balance thereof, without further delay. Thereafter, the Commission shall make a final award concerning such benefits or unpaid balance thereof, in accordance with the provisions of this chapter and all applicable provisions of this title. The Commission shall order payment of any award of compensation benefits pursuant to this chapter from the Uninsured Employer's Fund.

2. After an award has been entered against an employer for compensation benefits under any provision of this chapter, and upon finding that the employer has failed to comply with the provisions of § 65.2-801, or that a self-insured employer or its surety as required by § 65.2-801 is unable to satisfy an award in whole or in part, the Commission shall order the award, or any unpaid balance, to be paid from the Uninsured Employer's Fund after demand has been made by a claimant upon his employer or other uninsured entity which is responsible to pay the award. Such demand may be waived by the Commission for good cause shown.

B. For the purposes of this chapter, an employer who is a former member of a group self-insurance association *or group self-insurance pool* whose license has been terminated by the State Corporation Commission and whose security deposit with the State Treasurer or surety coverage has been exhausted shall be deemed to be an uninsured employer not in compliance with § 65.2-801. For all such uninsured employers, the Attorney General, or his designee, shall enforce the right of subrogation and recoupment

as provided in § 65.2-1204.