

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 426

An Act to amend and reenact § 65.2-802 of the Code of Virginia, relating to workers' compensation; group self-insurance associations.

[H 2418]

Approved March 23, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-802 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-802. Requirements for licensure as group self-insurance association; annual assessment.

A. Two or more employers having a common interest may be licensed by the State Corporation Commission as a group self-insurance association and permitted to enter into agreements to pool their liabilities under this title. The members of any such group self-insurance association may also enter into agreements to pool their liabilities for workers' compensation benefits which may arise under the laws of any other jurisdiction and other types of employers' liabilities for the death or disablement of, or injury to, their employees. Benefits payable by any such association for such members' liabilities under the laws of any other jurisdiction shall extend only to employees otherwise eligible for coverage under the provisions of this title.

B. The State Corporation Commission shall not license a group self-insurance association or grant authorization for an employer to become a member of such group unless it receives in such form as it requires satisfactory proof of the solvency of any such employer, the financial ability of each to meet his obligations as a member, and the ability of the group to pay or cause to be paid the compensation in the amount and manner and when due as provided for in this title and as may be agreed upon with respect to other types of employers' liabilities which may be authorized and provided hereunder.

C. Members of a group shall execute a written agreement under which each agrees to jointly and severally assume and discharge any liability under this title of employers party to such agreement. Agreements among the members shall be subject to approval by the State Corporation Commission; however, no such agreement nor membership in a group self-insurance association shall relieve an employer of the liabilities imposed by this title with respect to his employees. In addition to the rights of the association under such agreements, in the event of failure of the association to enforce such rights after reasonable notice to the association, the State Corporation Commission shall have the right independently to enforce on behalf of the association 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.

D. Any person, firm, or corporation desiring to engage in the business of providing services for a group self-insurance association shall satisfy the State Corporation Commission of its ability to perform the services necessary to fulfill the employer's obligations under this title before it undertakes to provide such services to any group self-insurance association. The State Corporation Commission may from time to time review and alter any decision approving an employer as a member of a group or its approval of a group or of an agency servicing a group. The State Corporation Commission may in its discretion require the deposit of an acceptable security, indemnity, or bond or the purchase of such excess insurance or the ceding of reinsurance on a specific or aggregate excess of loss basis as may be required by the circumstances.

E. The State Corporation Commission may establish reasonable requirements and standards for the approval of a group self-insurance association and the administration of such associations including, without limitation, the quality, amount and accounting of security deposits, bonds, excess insurance and reinsurance, the membership in any group self-insurance association, the amount of advance payments and reserves required of group self-insurance associations, the investment of such funds, the form and content of financial information to be submitted by a group self-insurance association and the frequency of such submissions, and the terms of agreements between members of a group self-insurance association. The State Corporation Commission may, 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; however, any group self-insurance association entering into a reinsurance transaction pursuant to the provisions of this section shall be deemed an insurer for purposes of such transaction and shall be subject to Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2.

F. Notwithstanding any provision of this title to the contrary, each licensed group self-insurance association shall be assessed annually by the State Corporation Commission in like manner and amount to that provided by Chapter 4 (§ 38.2-400 et seq.) of Title 38.2 and shall pay such assessment in accordance with the aforesaid provisions of law; however, for the purposes of such assessment "direct

gross premium income" of a licensed group self-insurance association shall be the aggregate of the amounts determined to be subject to the tax imposed by § 65.2-1006 on each employer member of such association.

G. Notwithstanding the provisions of § 49-25, neither the State Corporation Commission nor any other entity or person, as obligee under any surety bond required under this section or any regulation adopted hereunder, shall be required to institute suit against an association as a condition precedent to the surety's performance under the bond.

H. Subject to approval of the State Corporation Commission, and with such conditions as the State Corporation Commission may require, two or more group self-insurance associations formed pursuant to this section may merge if the resulting group self-insurance association assumes in full all obligations of the merged group self-insurance associations originally licensed pursuant to this section.