

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 465**

BY SENATORS CARMICHAEL, GAUNCH, MAYNARD,  
KARNES, SYPOLT AND WALTERS

[Originating in the Committee on the Judiciary;  
reported on February 9, 2016.]



1 A BILL to amend and reenact §33-31-2 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §33-46A-9 of said code, all relating to allowing professional employer  
3 organizations to insure certain risks through an insurance captive; establishing that  
4 professional employer organizations holding the appropriate license may insure its risks  
5 for insurance for accident and sickness as defined in current code; providing that such  
6 coverage for all employees and covered employees may be through a captive insurance  
7 company; eliminating prohibition against professional employer organizations offering or  
8 establishing self-funding health plans; providing that professional employer organizations  
9 can offer plans not fully insured by authorized insurers so long as the plan complies with  
10 current code requirements; clarifying that all employees covered by a professional  
11 employer organization's health benefit plan shall be considered employees of the  
12 professional employer organization; and clarifying that health benefit plans offered under  
13 this provision shall be treated as a single employer welfare benefit plan.

*Be it enacted by the Legislature of West Virginia:*

1 That §33-31-2 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; and that §33-46A-9 of said code be amended and reenacted, all to read as follows:

**ARTICLE 31. CAPTIVE INSURANCE.**

**§33-31-2. Licensing; authority.**

1 (a) Any captive insurance company, when permitted by its articles of association, charter  
2 or other organizational document, may apply to the commissioner for a license to do any and all  
3 insurance comprised in section ten, article one of this chapter: *Provided*, That all captive  
4 insurance companies, except pure captive insurance companies, shall maintain their principal  
5 office and principal place of business in this state: *Provided, however*, That:

6 (1) No pure captive insurance company may insure any risks other than those of its parent  
7 and affiliated companies or controlled unaffiliated business;

8 (2) No association captive insurance company may insure any risks other than those of  
9 the member organizations of its association and their affiliated companies;

10 (3) No industrial insured captive insurance company may insure any risks other than those  
11 of the industrial insureds that comprise the industrial insured group and their affiliated companies;

12 (4) No risk retention group may insure any risks other than those of its members and  
13 owners;

14 (5) No captive insurance company may provide personal motor vehicle or homeowner's  
15 insurance coverage or any component thereof;

16 (6) No captive insurance company may accept or cede reinsurance except as provided in  
17 section eleven of this article;

18 (7) No risk retention group may retain any risk on any one subject of insurance, whether  
19 located or to be performed in West Virginia or elsewhere, in an amount exceeding ten percent of  
20 the surplus required by section four of this article unless approved by the commissioner;

21 (8) Any captive insurance company may provide excess workers' compensation insurance  
22 to its parent and affiliated companies, unless prohibited by the federal law or laws of the state  
23 having jurisdiction over the transaction. Any captive insurance company, unless prohibited by  
24 federal law, may reinsure workers' compensation of a qualified self-insured plan of its parent and  
25 affiliated companies; and

26 (9) Any captive insurance company which insures risks described in subsections (a) and  
27 (b), section ten, article one of this chapter shall comply with all applicable state and federal laws.

28 (10) A professional employer organization licensed pursuant to the provisions of article  
29 forty-six-a of this chapter may insure its risks for insurance coverage for accident and sickness,  
30 as such insurance coverage is defined under subsection (b), section ten, article one of this chapter  
31 for all employees and covered employees through a captive insurance company.

32 (b) No captive insurance company may do any insurance business in this state unless:

33 (1) It first obtains from the commissioner a license authorizing it to do insurance business  
34 in this state;

35 (2) Its board of directors or, in the case of a reciprocal insurer, its subscribers' advisory  
36 committee, holds at least one meeting each year in this state; and

37 (3) It appoints a registered agent to accept service of process and to otherwise act on its  
38 behalf in this state: *Provided*, That whenever such registered agent cannot with reasonable  
39 diligence be found at the registered office of the captive insurance company, the Secretary of  
40 State shall be an agent of such captive insurance company upon whom any process, notice, or  
41 demand may be served.

42 (c) (1) Before receiving a license, a captive insurance company shall:

43 (A) File with the commissioner a certified copy of its organizational documents, a  
44 statement under oath of its president and secretary showing its financial condition, and any other  
45 statements or documents required by the commissioner; and

46 (B) Submit to the commissioner for approval a description of the coverages, deductibles,  
47 coverage limits and rates, together with such additional information as the commissioner may  
48 reasonably require. In the event of any subsequent material change in any item in such  
49 description, the captive insurance company shall submit to the commissioner for approval an  
50 appropriate revision and shall not offer any additional kinds of insurance until a revision of such  
51 description is approved by the commissioner. The captive insurance company shall inform the  
52 commissioner of any material change in rates within thirty days of the adoption of such change.

53 (2) Each applicant captive insurance company shall also file with the commissioner  
54 evidence of the following:

55 (A) The amount and liquidity of its assets relative to the risks to be assumed;

56 (B) The adequacy of the expertise, experience and character of the person or persons  
57 who will manage it;

58 (C) The overall soundness of its plan of operation;

59 (D) The adequacy of the loss prevention programs of its insureds; and

60 (E) Such other factors deemed relevant by the commissioner in ascertaining whether the  
61 proposed captive insurance company will be able to meet its policy obligations.

62 (3) Information submitted pursuant to this subsection shall be and remain confidential and  
63 may not be made public by the commissioner or an employee or agent of the commissioner  
64 without the written consent of the company, except that:

65 (A) Such information may be discoverable by a party in a civil action or contested case to  
66 which the captive insurance company that submitted such information is a party, upon a showing  
67 by the party seeking to discover such information that:

68 (i) The information sought is relevant to and necessary for the furtherance of such action  
69 or case;

70 (ii) The information sought is unavailable from other nonconfidential sources; and

71 (iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has  
72 been submitted to the commissioner: *Provided*, That the provisions of this subdivision shall not  
73 apply to any risk retention group; and

74 (B) The commissioner may, in the commissioner's discretion, disclose such information to  
75 a public officer having jurisdiction over the regulation of insurance in another state if:

76 (i) The public official shall agree in writing to maintain the confidentiality of such  
77 information; and

78 (ii) The laws of the state in which such public official serves require such information to be  
79 and to remain confidential.

80 (d) Each captive insurance company shall pay to the commissioner a nonrefundable fee  
81 of \$200 for examining, investigating and processing its application for license, and the  
82 commissioner is authorized to retain legal, financial and examination services from outside the  
83 department, the reasonable cost of which may be charged against the applicant. The provisions  
84 of subsection (r), section nine, article two of this chapter shall apply to examinations,

85 investigations and processing conducted under the authority of this section. In addition, each  
86 captive insurance company shall pay a license fee for the year of registration and a renewal fee  
87 for each year thereafter of \$300.

88 (e) If the commissioner is satisfied that the documents and statements that such captive  
89 insurance company has filed comply with the provisions of this article, the commissioner may  
90 grant a license authorizing it to do insurance business in this state until May 31, thereafter, which  
91 license may be renewed.

92 (f) A captive insurance company shall notify the commissioner in writing within thirty days  
93 of becoming aware of any material change in information previously submitted to the  
94 commissioner, including information submitted in or with the license application.

#### **ARTICLE 46A. PROFESSIONAL EMPLOYER ORGANIZATIONS.**

##### **§33-46A-9. Study of health plans, taxation, unemployment and labor laws; ~~self-funded~~ ~~plans prohibited; self-funded plans permitted under certain circumstances.~~**

1 (a) The Joint Committee on Government and Finance shall, in consultation with the  
2 Insurance Commissioner, the Secretary of the Department of Revenue and the Secretary of the  
3 Department of Commerce, study the issue of professional employer organization sponsorship of  
4 and involvement in employee health plans, including their role in insuring the uninsured and  
5 underinsured and their impact on the small group market, as well as issues related to how the  
6 operation of professional employer organizations affects other areas such as taxation and  
7 unemployment insurance. The joint committee shall report back to the Legislature on or before  
8 December 31, 2008, on its findings, conclusions and recommendations, together with drafts of  
9 any legislation necessary to effectuate its recommendations.

10 (b) ~~PEOs are expressly prohibited from self-funding health plans for covered employees.~~  
11 A professional employer organization that sponsors a health benefit plan shall be considered the  
12 employer of all of its covered employees, and all covered employees of one or more client  
13 employers participating in a health benefit plan sponsored by a single professional employer

14 organization shall be considered employees of that professional employer organization. For  
15 purposes of state law, such health benefit plans shall be treated as a single employer welfare  
16 benefit plan.

17 (c) If a professional employer organization offers to its covered employees any health  
18 benefit plan which is not fully insured by an authorized insurer, the plan must comply with the  
19 provisions of article thirty-one of this chapter.

NOTE: The purpose of this bill is to allow a professional employer organization to insure certain risks through a pure insurance captive.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.