

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 465

BY SENATORS CARMICHAEL, GAUNCH, MAYNARD,
KARNES, SYPOLT AND WALTERS, *original sponsors*
[Passed March 12, 2016; in effect 90 days from
passage]

1 AN ACT 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 for covered employees; providing that professional
9 employer organizations can offer plans not fully insured by authorized insurers so long as
10 the plan complies with current code requirements; clarifying that all employees covered
11 by a professional employer organization's health benefit plan shall be considered
12 employees of the professional employer organization; clarifying that health benefit plans
13 offered under this provision shall be treated as a single employer welfare benefit plan;
14 deleting obsolete code provision related to a study that was never conducted; and
15 authorizing insurance commissioner to promulgate and adopt rules with respect to
16 professional employer organizations sponsoring health benefit plans.

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
31 chapter, 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. Health benefit plans; self-funded plans permitted under certain circumstances.

1 (a) A professional employer organization that sponsors a health benefit plan shall be
2 considered the employer of all of its covered employees, and all covered employees of one or
3 more client employers participating in a health benefit plan sponsored by a single professional
4 employer organization shall be considered employees of that professional employer organization.
5 For purposes of state law, such health benefit plans shall be treated as a single employer welfare
6 benefit plan.

7 (b) If a professional employer organization offers to its covered employees any health
8 benefit plan which is not fully insured by an authorized insurer, the professional employer
9 organization must comply with the provisions of article thirty-one of this chapter. The Insurance
10 Commissioner of West Virginia is authorized to promulgate and adopt rules with respect to
11 professional employer organizations sponsoring health benefit plans in accordance with this
12 section.