

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 465

BY SENATORS CARMICHAEL, GAUNCH, MAYNARD,

KARNES, SYPOLT AND WALTERS

[Introduced February 2, 2016;

Referred to the Committee on the Judiciary.]

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 organization to insure certain risks through a pure insurance captive.

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) of 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, chapter thirty-three of this code, may insure its risks for insurance coverage for
30 accident and sickness, as such insurance coverage is defined under subsection b, section 10,
31 article 1, chapter thirty-three of this code, for all employees and covered employees through a
32 pure captive insurance company.

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

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

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

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

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

44 (A) File with the commissioner a certified copy of its organizational documents, a

45 statement under oath of its president and secretary showing its financial condition, and any other
46 statements or documents required by the commissioner; and

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

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

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

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

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

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

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

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

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

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

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

72 (iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has
73 been submitted to the commissioner: *Provided*, That the provisions of subdivision (3) of this
74 subsection shall not apply to any risk retention group; and

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

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

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

81 (d) Each captive insurance company shall pay to the commissioner a nonrefundable fee
82 of \$200 for examining, investigating and processing its application for license, and the
83 commissioner is authorized to retain legal, financial and examination services from outside the
84 department, the reasonable cost of which may be charged against the applicant. The provisions
85 of subsection (r), section nine, article two of this chapter shall apply to examinations,
86 investigations and processing conducted under the authority of this section. In addition, each
87 captive insurance company shall pay a license fee for the year of registration and a renewal fee
88 for each year thereafter of \$300.

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

93 (f) A captive insurance company shall notify the commissioner in writing within thirty days
94 of becoming aware of any material change in information previously submitted to the
95 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.~~

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 PEO sponsorship of and involvement in employee
 4 health plans, including their role in insuring the uninsured and underinsured and their impact on
 5 the small group market, as well issues related to how the operation of PEOs affects other areas
 6 such as taxation and unemployment insurance. The Joint Committee shall report back to the
 7 Legislature on or before December 31, 2008 on its findings, conclusions and recommendations,
 8 together with drafts of any legislation necessary to effectuate its recommendations.

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

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

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.