
WEST VIRGINIA CODE CHAPTER 33
ARTICLE 31A

WV Legislature

§33-31A-1. Applicability of article.

In addition to the provisions of article thirty-one of this chapter, the provisions of this article shall apply to all sponsored captive insurance companies.

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§33-31A-2. Definitions.

As used in this article, unless the context requires otherwise:

(1) "Participant" means associations, corporations, limited liability companies, partnerships, trusts and other business entities and any affiliates thereof that are insured by a sponsored captive insurance company where the losses of the participant are limited through a participant contract to such participant's pro rata share of the assets of one or more protected cells identified in such participant contract.

(2) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.

(3) "Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of such participants as set forth in such participant contracts.

(4) "Sponsor" means any entity that meets the requirements of section six of this article and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

(5) "Sponsored captive insurance company" means any captive insurance company:

(A) In which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(B) That is formed or licensed under the provisions of this chapter;

(C) That insures the risks only of its participants through separate participant contracts; and

(D) That funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account.

§33-31A-3. Formation of sponsored captive insurance companies.

One or more sponsors may form a sponsored captive insurance company under the provisions of this article. A sponsored captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

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§33-31A-4. Supplemental application materials.

In addition to the information required by subdivisions (1) and (2), subsection (c), section two, article thirty-one of this chapter, each applicant-sponsored captive insurance company shall file with the commissioner the following:

- (1) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report such experience to the commissioner;
- (2) A statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner or the commissioner's designated agent;
- (3) All contracts or sample contracts between the sponsored captive insurance company and any participants; and
- (4) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

§33-31A-5. Protected cells.

A sponsored captive insurance company formed or licensed under the provisions of this article may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(1) The shareholders of a sponsored captive insurance company shall be limited to its participants and sponsors: Provided, That a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;

(2) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or loss, dividends or other distributions to participants and such other factors as may be provided in the participant contract or required by the commissioner;

(3) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(4) No sale, exchange or other transfer of assets may be made by such sponsored captive insurance company between or among any of its protected cells without the consent of such protected cells;

(5) No sale, exchange, transfer of assets, dividend or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval and in no event shall such approval be given if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell;

(6) Each sponsored captive insurance company shall annually file with the commissioner such financial reports as the commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

(7) Each sponsored captive insurance company shall notify the commissioner in writing within ten business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

(8) No participant contract shall take effect without the commissioner's prior written approval and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the business plan requiring the commissioner's prior written approval; and

(9) The business written by a sponsored captive, with respect to each cell, shall be:

(A) Fronted by an insurance company licensed under the laws of any state;

(B) Reinsured by a reinsurer authorized or approved by the State of West Virginia; or

(C) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The commissioner may require the sponsored captive to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit must be established, issued or confirmed by a bank chartered in this state, a member of the federal reserve system or a bank chartered by another state if such state chartered bank is acceptable to the commissioner. A trust maintained pursuant to this paragraph shall be established in a form and upon such terms approved by the commissioner.

§33-31A-6. Qualification of sponsors.

A sponsor of a sponsored captive insurance company shall be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state or a captive insurance company formed or licensed under this article. A risk retention group shall not be either a sponsor or a participant of a sponsored captive insurance company.

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§33-31A-7. Authorized participants.

Associations, corporations, limited liability companies, partnerships, trusts and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter. A sponsor may be a participant in a sponsored captive insurance company. A participant need not be a shareholder of the sponsored captive insurance company or any affiliate thereof. A participant shall insure only its own risks through a sponsored captive insurance company.

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§33-31A-8. Investments.

Notwithstanding the provisions of section five of this article, the assets of two or more protected cells may be combined for purposes of investment, and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes. Sponsored captive insurance companies shall comply with the investment requirements contained in article eight of this chapter, as applicable: Provided, That compliance with such investment requirements shall be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to section eleven, article thirty-one of this chapter or to the extent otherwise deemed reasonable and appropriate by the commissioner. Notwithstanding any other provision of this chapter, the commissioner may approve the use of alternative reliable methods of valuation and rating.

§33-31A-9. Delinquency.

In the case of a delinquency of a sponsored captive insurance company, the provisions of section seventeen, article thirty-one of this chapter shall apply, provided:

- (1) The assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell; and
- (2) Its capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.