

WEST VIRGINIA CODE: §33-4-15

§33-4-15. Reinsurance.

(a) For purposes of this section, an "assumption reinsurance agreement" means any contract which:

(1) Transfers insurance obligations and/or risks of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer; and

(2) Is intended to effect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations and/or risks under the contracts are extinguished.

(b) An insurer shall reinsure its risks, or any part thereof, only in solvent insurers complying with the capital and surplus requirements of section five-b, article three of this chapter.

(c) Credit for reinsurance shall be governed by the provisions of sections fifteen-a and fifteen-b of this article.

(1) No credit shall be allowed, as an admitted asset or deduction from liability, to any ceding insurer for reinsurance, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer.

Payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:

(A) Where the contract or other written agreement specifically provides another payee of the reinsurance in the event of the insolvency of the ceding insurer; or (B) where the assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to payees.

(2) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against the ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose, at its own expense, in the proceeding where the claim is to be adjudicated any defenses which it deems available to the ceding insurer or its liquidator. The expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense shall be apportioned in accordance with the terms of the

reinsurance agreement as though the expense had been incurred by the ceding insurer.

(d) Any licensed insurer may accept reinsurance for the same kinds of insurance and within the same limits as it is authorized to transact direct insurance.

(e) A licensed insurer may reinsure all or substantially all of its risks on property or lives located in West Virginia, or substantially all of a major class thereof, with another insurer by an assumption reinsurance agreement: Provided, That the assumption reinsurance agreement shall not become effective unless filed in advance with and approved in writing by the Commissioner: Provided, however, That if a licensed insurer is deemed by the Commissioner to be in hazardous financial condition, as defined in article thirty-four-a of this chapter, or an administrative or judicial proceeding has been instituted against it for the purpose of liquidating, reorganizing or conserving the insurer, and the transfer of the contracts of insurance is determined by the Commissioner to be in the best interest of the policyholders, the Commissioner may by written order waive the advance filing and approval required by this section, which waiver may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer.

(f) The Commissioner shall approve a reinsurance agreement within one hundred twenty days after the filing of same unless he or she finds that it is inequitable to the licensed insurer, its owners or its policyholders or would substantially reduce the protection or service to its policyholders. If the Commissioner does not approve the agreement, he or she shall notify the insurer in writing specifying his or her reasons therefor. If the Commissioner does not disapprove the agreement within one hundred twenty days, the agreement shall be deemed approved.

(g) A filing may not be made pursuant to this section unless the reinsurance agreement is certified under oath by responsible officers of the reinsurer and the reinsured to contain the entire agreement between the parties to the reinsurance agreement.

(h) The Commissioner shall promulgate rules pursuant to chapter twenty-nine-a of this code for the implementation and administration of the provisions of this section to include, but not be limited to, the type of assumption agreements subject to the provisions of this section, their content and the standards the Commissioner may utilize in reviewing the agreements.

(i) Any insurer subject to this section is also subject to the provisions of article thirty-eight of this chapter.