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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 503

(By Senator Minard)

PASSED April 14, 2001

In Effect 90 days from Passage

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(BY SENATOR MINARD)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, four, five, seven and eleven, article thirty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to codification of statutory accounting principles to be used in the annual audited financial reports of insurers; and addressing the commissioner's approval of combined or consolidated financial statements.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five, seven and eleven, article thirty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-1. Declaration of policy and purpose.

- 1 (a) The purpose of this article is to improve the insurance
- 2 commissioner's surveillance of the financial condition of

3 insurers by requiring an annual examination by independ-
4 ent certified public accountants of the financial statements
5 reporting the financial condition and the results of opera-
6 tions of insurers.

7 (b) Foreign or alien insurers filing audited financial
8 reports in another state, pursuant to the other state's
9 requirement of audited financial reports which has been
10 found by the commissioner to be substantially similar to
11 the requirements herein, are exempt from this article if:

12 (1) A copy of the audited financial report, report on
13 significant deficiencies in internal controls and the accoun-
14 tant's letter of qualifications which are filed with the other
15 state are filed with the commissioner in accordance with
16 the filing dates specified in sections three, ten and ten-a of
17 this article, respectively. Canadian insurers may submit
18 accountants' reports as filed with the Canadian dominion
19 department of insurance.

20 (2) A copy of any notification of adverse financial
21 condition report filed with the other state is filed with the
22 commissioner within the time specified in section nine of
23 this article.

24 (c) This article shall not prohibit or preclude or in any
25 way limit the commissioner from performing examinations
26 of insurers as specified in section nine, article two of this
27 chapter or any other examinations as the commissioner
28 may be authorized by this chapter to perform.

§33-33-2. Definitions.

1 (a) "Accountant" and "independent certified public
2 accountant" means an independent certified public
3 accountant or accounting firm in good standing with the
4 American institute of certified public accountants and in
5 all states in which the accountant is licensed to practice;
6 for Canadian and British companies, the terms mean a
7 Canadian-chartered or British-chartered accountant.

8 (b) "Annual statement" means the annual financial
9 statement required to be filed by insurers with the com-
10 missioner pursuant to the provisions of this chapter.

11 (c) "Audited financial report" means and includes those
12 items specified in section four of this article.

13 (d) "Insurer" for purposes of this article means any
14 domestic insurer as defined in section six, article one of
15 this chapter and includes any domestic stock insurance
16 company, mutual insurance company, reciprocal insurance
17 company, farmers' mutual fire insurance company,
18 fraternal benefit society, hospital service corporation,
19 medical service corporation, health care corporation,
20 health maintenance organization, captive insurance
21 company or risk retention group and any licensed foreign
22 or alien insurer defined in article one of this chapter.

23 (e) "Workpapers" means and includes audit planning
24 documentation, work programs, analyses, memoranda,
25 letters of confirmation and representation, abstracts of
26 company documents and schedules or commentaries
27 prepared or obtained by the independent certified public
28 accountant in the course of the examination of the finan-
29 cial statements of an insurer and which support the
30 opinion thereon.

§33-33-4. Contents of annual audited financial report.

1 (a) The annual audited financial report shall report the
2 financial condition of the insurer as of the end of the most
3 recent calendar year and the results of its operations, cash
4 flows and changes in capital and surplus for the year then
5 ended in conformity with statutory accounting practices
6 for preparation of the annual statement or as otherwise
7 permitted by the commissioner.

8 (b) The annual audited financial report shall include the
9 following:

10 (1) Report of independent certified public accountant;

11 (2) Balance sheet reporting admitted assets, liabilities,
12 capital and surplus;

13 (3) Statement of gain or loss from operations or state-
14 ment of revenue and expenses;

15 (4) Statement of cash flows statement;

16 (5) Statement of changes in capital and surplus;

17 (6) Notes to financial statements. These notes shall be
18 those required by the appropriate national association of
19 insurance commissioners annual statement instructions
20 and accounting practices and procedures manual, as
21 amended, including reconciliation differences, if any,
22 between the audited statutory financial statements and the
23 annual statement with a written description of the nature
24 of these differences.

25 (7) The financial statements included in the audited
26 financial report shall be prepared in a form and using
27 language and groupings substantially the same as the
28 relevant sections of the annual statement of the insurer
29 filed with the commissioner; and:

30 (A) The financial statement shall be comparative,
31 presenting the amounts as of the thirty-first day of
32 December of the current year and the amounts as of the
33 immediately preceding thirty-first day of December:
34 *Provided*, That in the first year in which an insurer is
35 required to file an audited financial report, the compara-
36 tive data may be omitted.

37 (B) Amounts may be rounded to the nearest thousand
38 dollars;

39 (8) Supplementary data and information. This shall
40 include any additional clarifying information or data
41 which the commissioner may require to be disclosed.

**§33-33-5. Designation of independent certified public account-
tant.**

1 (a) Each insurer required by this article to file an annual
2 audited financial report must, within sixty days after
3 becoming subject to the requirements, register with the
4 commissioner in writing the name and address of the

5 accountant retained to conduct the annual audit set forth
6 in this article.

7 (b) The insurer shall obtain a letter from the accountant,
8 and file a copy with the commissioner stating that the
9 accountant is aware of the provisions of this code and
10 rules that relate to accounting and financial matters and
11 affirming that he or she will express his or her opinion on
12 the financial statements in terms of their conformity to the
13 statutory accounting practices prescribed or otherwise
14 permitted by the commissioner specifying any exceptions
15 as he or she may believe appropriate.

16 (c) If an accountant who was not the accountant for the
17 immediately preceding filed audited financial report is
18 engaged to audit the insurer's financial statements, the
19 insurer shall within thirty days of the date the accountant
20 is engaged notify the commissioner of this event.

21 (d) If an accountant who was the accountant for the
22 immediately preceding filed audited financial report is
23 dismissed or resigns, the insurer shall within five business
24 days notify the commissioner of this event. The insurer
25 shall also furnish the commissioner with a separate letter
26 within ten business days of the above notification stating
27 whether in the twenty-four months preceding the notifica-
28 tion there were any disagreements with the former accoun-
29 tant on any matter of accounting principles or practices,
30 financial statement disclosure or auditing scope or proce-
31 dure, which disagreements, if not resolved to the satisfac-
32 tion of the former accountant, would have caused him or
33 her to make reference to the subject matter of the dis-
34 agreement in connection with his or her opinion. The
35 disagreements required to be reported in response to this
36 section include both those resolved to the former accoun-
37 tant's satisfaction and those not resolved to the former
38 accountant's satisfaction. Disagreements contemplated by
39 this section are those that occur at the decision-making
40 level between personnel of the insurer responsible for
41 presentation of its financial statements and personnel of

42 the accounting firm responsible for rendering its report.
43 The insurer shall also in writing request the former
44 accountant to furnish it a letter addressed to the insurer
45 stating whether the accountant agrees with the statements
46 contained in the insurer's letter and, if not, stating the
47 reasons for which he or she does not agree; and the insurer
48 shall furnish the responsive letter from the former accoun-
49 tant to the commissioner together with its own.

§33-33-7. Consolidated or combined audits.

1 An insurer may make written application to the commis-
2 sioner for approval to file audited consolidated or com-
3 bined financial statements in lieu of separate annual
4 audited financial statements if the insurer is part of a
5 group of insurance companies which utilizes a pooling or
6 one hundred percent reinsurance agreement that affects
7 the solvency and integrity of the insurer's reserves and the
8 insurer cedes all of its direct and assumed business to the
9 pool. If an approval is granted, a columnar consolidating
10 or combining worksheet shall be filed with the report
11 incorporating the following:

12 (1) Amounts shown on the consolidated or combined
13 audited financial report shall be shown on the worksheet;

14 (2) Amounts for each insurer subject to this section shall
15 be stated separately;

16 (3) Noninsurance operations may be shown on the
17 worksheet on a combined or individual basis;

18 (4) Explanations of consolidating and eliminating entries
19 shall be included; and

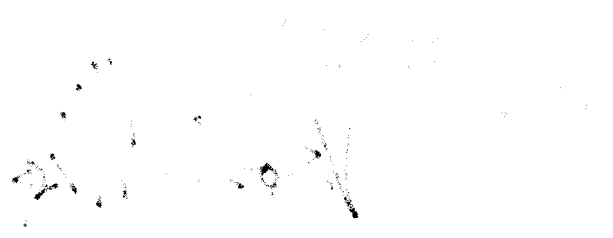
20 (5) A reconciliation shall be included of any differences
21 between the amounts shown in the individual insurer
22 columns of the worksheet and comparable amounts shown
23 on the annual statements of the insurers.

**§33-33-11. Definition, availability and maintenance of certified
public accountant (CPA) workpapers.**

1 (a) Workpapers shall be kept by the independent certi-
2 fied public accountant of the procedures followed, the
3 tests performed, the information obtained and the conclu-
4 sions reached pertinent to the examination of the financial
5 statements of an insurer.

6 (b) Every insurer required to file an audited financial
7 report pursuant to this article shall require the accountant
8 to make available for review by the commissioner the
9 workpapers prepared in the conduct of the examination.
10 The insurer shall require that the accountant retain the
11 audit workpapers and any communications related to the
12 audit between the accountant and the insurer, at the
13 offices of the insurer, at the insurance department or at
14 any other reasonable place designated by the commis-
15 sioner. The insurer shall require that the accountant
16 retain the audit workpapers and communications until the
17 commissioner has filed a report of examination, as re-
18 quired by section nine, article two of this chapter, covering
19 the period of the audit but no longer than seven years from
20 the date of the audit report.

21 (c) In the conduct of the aforementioned periodic review
22 by the commissioner, it shall be agreed that copies of
23 pertinent audit workpapers may be made and retained by
24 the commissioner. Reviews by the commissioner shall be
25 considered investigations and all workpapers and commu-
26 nications obtained during the course of any investigations
27 shall be afforded the same confidentiality as other exami-
28 nation workpapers generated by the commissioner.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carly A. [Signature]

Chairman Senate Committee

[Signature]

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell [Signature]

Clerk of the Senate

Bryan [Signature]

Clerk of the House of Delegates

Earl Ray Tomblin

President of the Senate

[Signature]

Speaker House of Delegates

The within is approved this the 2nd Day of May, 2001.

Bob Wise
Governor

PRESENTED TO THE

GOVERNOR

Date: 5/1/01

Time: 2:25 pm