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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 254

(By Senator Minard, et al)

PASSED April 9, 2005

In Effect 90 days from **Passage**

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Senate Bill No. 254

(BY SENATOR MINARD)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §33-38-2, §33-38-3 and §33-38-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §33-38-3a and §33-38-14, all relating to reinsurance intermediaries; defining terms; establishing licensing requirements and procedures; setting fees; providing for service of process; and providing for reciprocity in certain instances.

Be it enacted by the Legislature of West Virginia:

That §33-38-2, §33-38-3 and §33-38-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §33-38-3a and §33-38-14, all to read as follows:

ARTICLE 38. REINSURANCE INTERMEDIARY ACT.

§33-38-2. Definitions.

- 1 The definitions set forth in section two, article twelve of
- 2 this chapter apply to this article. In addition, as used in
- 3 this article:

4 (a) "Actuary" means a person who is a member in good
5 standing of the American academy of actuaries.

6 (b) "Controlling person" means any person, firm,
7 association or corporation who directly or indirectly has
8 the power to direct or cause to be directed, the manage-
9 ment, control or activities of the reinsurance intermediary.

10 (c) "Commissioner" means the Insurance Commissioner
11 of West Virginia.

12 (d) "Insurer" means any person, firm, association or
13 corporation duly licensed in this state pursuant to the
14 applicable provisions of this chapter as an insurer.

15 (e) "Firm" means an individual doing business as a sole
16 proprietor, a partnership, limited liability company,
17 limited liability partnership or other legal entity.

18 (f) "Licensed producer" means an insurance producer or
19 reinsurance intermediary licensed pursuant to the applica-
20 ble provisions of this chapter.

21 (g) "Reinsurance intermediary" means a reinsurance
22 intermediary-broker or a reinsurance intermediary-
23 manager as these terms are defined in subdivisions (g) and
24 (h) of this section.

25 (h) "Reinsurance intermediary-broker" means any
26 person, other than an officer or employee of the ceding
27 insurer, firm, association or corporation who solicits,
28 negotiates or places reinsurance cessions or retrocessions
29 on behalf of a ceding insurer without the authority or
30 power to bind reinsurance on behalf of such insurer.

31 (i) "Reinsurance intermediary-manager" means any
32 person, firm, association or corporation who has authority
33 to bind or manages all or part of the assumed reinsurance
34 business of a reinsurer, including the management of a
35 separate division, department or underwriting office, and
36 acts as an agent for such reinsurer, whether known as a
37 reinsurance intermediary-manager, manager or other

38 similar term. Notwithstanding the above, the following
39 persons are not considered a reinsurance intermedi-
40 ary-manager, with respect to such reinsurer, for the
41 purposes of this article:

42 (1) An employee of the reinsurer;

43 (2) A United States manager of the United States branch
44 of an alien reinsurer;

45 (3) An underwriting manager who, pursuant to contract,
46 manages all the reinsurance operations of the reinsurer, is
47 under common control with the reinsurer, subject to
48 article twenty-seven of this chapter, and whose compensa-
49 tion is not based on the volume of premiums written.

50 (4) The manager of a group, association, pool or organi-
51 zation of insurers which engage in joint underwriting or
52 joint reinsurance and who are subject to examination by
53 the official charged with regulation of insurance in the
54 state in which the manager's principal business office is
55 located.

56 (j) "Reinsurer" means any person, firm, association or
57 corporation duly licensed or accredited in this state
58 pursuant to the applicable provisions of this chapter as an
59 insurer with the authority to assume reinsurance.

60 (k) "To be in violation" means that the reinsurance
61 intermediary, insurer or reinsurer for whom the reinsur-
62 ance intermediary was acting failed to substantially
63 comply with the provisions of this article.

64 (l) A "qualified United States financial institution"
65 means an institution that:

66 (1) Is organized or, in the case of a United States office
67 of a foreign banking organization, licensed under the laws
68 of the United States or any state thereof;

69 (2) Is regulated, supervised and examined by federal or
70 state authorities having regulatory authority over banks
71 and trust companies; and

72 (3) Has been determined by either the Commissioner or
73 the securities valuation office of the National Association
74 of Insurance Commissioners to meet such standards of
75 financial condition and standing as are considered neces-
76 sary and appropriate to regulate the quality of financial
77 institutions whose letters of credit will be acceptable to
78 the Commissioner.

§33-38-3. Licensure.

1 (a) No person, firm, association or corporation may act
2 as a reinsurance intermediary-broker in this state if the
3 reinsurance intermediary-broker maintains an office
4 either directly or as a member or employee of a firm or
5 association, or an officer, director or employee of a
6 corporation:

7 (1) In this state, unless such reinsurance intermediary-
8 broker is a licensed insurance producer or reinsurance
9 intermediary in this state; or

10 (2) In another state, unless such reinsurance intermedi-
11 ary-broker is a licensed insurance producer or reinsurance
12 intermediary in this state or another state having a law
13 substantially similar to this article or such reinsurance
14 intermediary-broker is licensed in this state as a nonresi-
15 dent reinsurance intermediary.

16 (b) No person, firm, association or corporation may act
17 as a reinsurance intermediary-manager:

18 (1) For a reinsurer domiciled in this state, unless such
19 reinsurance intermediary-manager is a licensed insurance
20 producer or reinsurance intermediary in this state;

21 (2) In this state, if the reinsurance intermediary-manager
22 maintains an office either directly or as a member or
23 employee of a firm or association, or an officer, director or
24 employee of a corporation in this state, unless such
25 reinsurance intermediary-manager is a licensed insurance
26 producer or reinsurance intermediary in this state;

27 (3) In another state for a nondomestic insurer, unless
28 such reinsurance intermediary-manager is a licensed
29 insurance producer in this state or another state having a
30 law substantially similar to this article or such person is
31 licensed in this state as a nonresident reinsurance interme-
32 diary.

33 (c) The Commissioner may require a reinsurance inter-
34 mediary-manager subject to the provisions of subsection
35 (b) of this section to:

36 (1) File a bond in an amount from an insurer acceptable
37 to the Commissioner for the protection of the reinsurer;
38 and

39 (2) Maintain an errors and omissions policy in an amount
40 acceptable to the Commissioner.

41 (d) Licensed attorneys at law of this state when acting in
42 their professional capacity are exempt from this section.

§33-38-3a. License applications, issuance, refusal and renewal.

1 (a) An applicant for a reinsurance intermediary license
2 shall file with the Commissioner an application on the
3 form prescribed by the Commissioner and pay a
4 nonrefundable application fee of five hundred dollars.

5 (b) The application shall include: (1) For a firm or
6 association, the name of each member of the firm or
7 association and of each employee of the firm or association
8 who will act as a reinsurance intermediary under the
9 license; and (2) for a corporation, the name of each officer
10 of the corporation and of each employee and director of
11 the corporation who will act as a reinsurance intermediary
12 under the license.

13 (c) The Commissioner shall issue a nonresident reinsur-
14 ance intermediary license if: (1) The applicant is currently
15 licensed as a resident reinsurance intermediary or insur-
16 ance producer and is in good standing in his or her home
17 state, has submitted either the application for licensure

18 that the person submitted to his or her home state or a
19 completed application deemed appropriate by the Com-
20 missioner and has paid the fees required by this section;
21 and (2) the applicant's home state awards nonresident
22 licenses to residents of this state on the same basis.

23 (d) Any license issued to a firm or association authorizes
24 all the members of the firm or association and any desig-
25 nated employees to act as reinsurance intermediaries
26 under the license and all of these persons shall be named
27 in the application and any supplements thereto. Any
28 license issued to a corporation shall authorize all of the
29 officers, and any designated employees and directors
30 thereof, to act as reinsurance intermediaries on behalf of
31 such corporation and all of these persons shall be named
32 in the application and any supplements thereto. To add a
33 name to or delete a name from a reinsurance intermediary
34 license, the licensee shall submit to the Commissioner the
35 change on a form prescribed by the Commissioner.

36 (e) The Commissioner may refuse to issue or renew a
37 reinsurance intermediary license if the Commissioner finds
38 that the applicant, any individual named on the applica-
39 tion, a member, principal, officer or director of the appli-
40 cant or a controlling person of the applicant is not trust-
41 worthy, as that term may be defined by the Commissioner
42 in legislative rules promulgated pursuant to section twelve
43 of this article, to act as a reinsurance intermediary, has
44 given cause for revocation or suspension of a license or has
45 failed to comply with a requirement for issuance of a
46 license.

47 (f) Every nonresident firm, association or corporation
48 licensed as a reinsurance intermediary in this state or
49 acting as a reinsurance intermediary in this state but
50 which is not licensed shall be subject to the provisions of
51 section twelve, article four of this chapter to the same
52 extent as licensed insurers with regard to the service of
53 process and payment of fees.

54 (g) Upon written request, the Commissioner shall furnish
55 a summary of the basis for refusal to issue or renew a
56 license, which document shall be privileged and not
57 subject to the provisions of article one, chapter twenty-
58 nine-a of this code. Within ten days of receipt of the
59 summary, if the applicant or licensee makes a written
60 demand upon the Commissioner for a hearing to determine
61 the reasonableness of the Commissioner's action, a hearing
62 shall be conducted in accordance with the provisions of
63 section thirteen, article two of this chapter.

64 (h) Each license issued pursuant to this article expires on
65 the thirtieth day of June next following the date of issu-
66 ance. Between the first day of May and the first day of
67 June of the renewal year, each licensed reinsurance
68 intermediary shall submit to the Commissioner a renewal
69 application and a nonrefundable annual renewal fee of
70 two hundred dollars: *Provided*, That a reinsurance
71 intermediary who allows the reinsurance intermediary
72 license to lapse may, within eleven months from the
73 expiration date, reinstate the same license upon payment
74 of a renewal fee of four hundred dollars.

75 (i) All application and renewal fees collected by the
76 Commissioner pursuant to the provisions of this section
77 shall be paid into the State Treasury and credited to the
78 special revenue account created in section thirteen, article
79 three of this chapter.

80 (j) Within thirty days of a change in its legal name or
81 mailing address, a licensee shall notify the Commissioner
82 of such change on a form prescribed by the Commissioner,
83 and failure to timely file such form may result in a penalty
84 pursuant to section eleven of this article.

§33-38-13. Fees.

1 Except where it is otherwise specially provided, the
2 Commissioner shall demand and receive the following fees
3 from all reinsurance intermediaries: For receiving and

4 filing annual reports, one hundred dollars; for filing
5 certified copy of articles of incorporation, fifty dollars; for
6 filing copy of its charter, fifty dollars; for filing statements
7 preliminary to admission, one hundred dollars; for filing
8 of designated contract, twenty-five dollars; for filing of
9 notification of termination of a contract with a reinsur-
10 ance intermediary-manager by the reinsurer, ten dollars;
11 for filing to add or delete names on the reinsurance
12 intermediary license, twenty-five dollars; for filing an
13 address change, twenty-five dollars; for filing a legal name
14 change, seventy-five dollars; for filing a bond or an errors
15 and omissions policy, twenty-five dollars; and for filing
16 any additional documents as required by law or furnishing
17 copies thereof, copies of reports or certificates of condition
18 of reinsurance intermediary to be filed in any other state,
19 twenty dollars. All such fees shall be paid into the State
20 Treasury and credited to the special revenue account
21 created in section thirteen, article three of this chapter.

§33-38-14. Reciprocity.

1 (a) The Commissioner may waive any requirements for
2 a nonresident license applicant with a valid license from
3 the applicant's home state, except the requirements
4 imposed by sections three and three-a of this article, if the
5 applicant's home state awards nonresident licenses to
6 residents of this state on the same basis.

7 (b) A nonresident reinsurance intermediary's satisfaction
8 of his or her home state's continuing education require-
9 ments for licensed insurance producers or reinsurance
10 intermediaries shall constitute satisfaction of this state's
11 continuing education requirements if the nonresident's
12 home state recognizes the satisfaction of its continuing
13 education requirements imposed upon insurance producers
14 or reinsurance intermediaries from this state on the same
15 basis.

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

Kandy White
.....
Chairman Senate Committee

H. Rubin Brown
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Edelman
.....
Clerk of the Senate

George W. Bond
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert S. Taylor
.....
Speaker House of Delegates

The within *is approved* this the *28th*
Day of *April*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 2:00 pm