WEST VIRGINIA CODE CHAPTER 33 ARTICLE 21

WV Legislature

§33-21-1. Scope of article.

This article applies to reciprocal insurers and reciprocal insurance. Foreign and alien reciprocal insurers shall be governed by all provisions of this article not expressly made applicable only to domestic reciprocal insurers, and domestic reciprocal insurers shall be governed by all the provisions of this article.

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§33-21-2. General laws applicable.

Except as otherwise provided, and except where the context clearly requires otherwise, all the provisions of this chapter relating to insurers generally, and all the provisions of this chapter relating to insurers transacting the same kinds of insurance which reciprocal insurers are permitted to transact, are applicable to reciprocal insurers, except that article twelve of this chapter shall not apply to reciprocal insurers.

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§33-21-3. Kinds of insurance.

A reciprocal insurer, upon being licensed therefor as provided in this article, when possessed of and maintaining on deposit surplus funds equal to the minimum capital required of a stock insurer to transact like kinds of insurance, may transact fire, marine, casualty or surety insurance, and may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance it is licensed to transact direct. No reciprocal insurer shall be licensed to transact, nor shall any reciprocal insurer transact, life or accident and sickness insurance.

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§33-21-4. Name.

A reciprocal insurer shall have and use a business name, which shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting," in which name such insurer may sue and be sued.

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§33-21-5. Attorney.

"Attorney," as used in this article, refers to the attorney- in-fact of a reciprocal insurer, and such attorney may be an individual, firm or corporation.

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§33-21-6. Application for license.

A reciprocal insurer desiring to transact insurance may apply to the commissioner for a license. The attorney shall execute under his oath and file with the commissioner such application setting forth:

(a) The name of the insurer;

(b) The location of the insurer's principal office, which shall be the same as that of the attorney, and in the case of a domestic reciprocal insurer shall be maintained within this state;

(c) The kinds of insurance proposed to be transacted;

(d) The designation and appointment of the proposed attorney and a copy of the power of attorney;

(e) The names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

(f) In the case of a domestic reciprocal insurer, the powers of the subscribers' advisory committee, and in the case of domestic, foreign or alien reciprocal insurers, the names and terms of office of the members thereof;

(g) In the case of a domestic reciprocal insurer that all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(h) A copy of the subscribers' agreement;

(i) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by section three of this article is on hand;

(j) A copy of each policy, endorsement, and application form it then proposes to issue or use;

(k) In the case of a foreign or alien reciprocal insurer a statement from the insurance supervisory official of its state of domicile or entry that it is licensed in such state to transact the kinds of insurance it proposes to transact in West Virginia;

(l) In the case of a domestic reciprocal insurer, the names and addresses of the original subscribers who must number at least twenty-five;

(m) In the case of a domestic reciprocal insurer, a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at an

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adequate rate theretofore filed with and approved by the commissioner;

(n) Such other information as the commissioner deems necessary.

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§33-21-7. Issuance of license; suspension, revocation or renewal.

The license of a reciprocal insurer shall be issued to its attorney in the name of the insurer and may be suspended, revoked or renewal refused in the same manner and upon the same grounds as other insurers.

WV Legislature

§33-21-8. Power of attorney.

(a) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers, which power of attorney must set forth:

(1) The powers of the attorney;

(2) That the attorney is empowered to accept service of process on behalf of the insurer;

(3) The general services to be performed by the attorney;

(4) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer;

(5) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than one nor more than ten times the annual premium or premium deposit stated in the policy.

(b) The power of attorney may:

(1) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(2) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(3) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee;

(4) Contain other lawful provisions deemed advisable.

(c) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable.

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§33-21-9. Modification of subscribers' agreement or power of attorney.

Modification of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No modification of a domestic, foreign or alien reciprocal insurer's power of attorney or subscribers' agreement shall be effective retroactively, nor as to any insurance contract issued prior thereto, and such modification shall be reasonable and equitable, and shall be filed with the commissioner.

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§33-21-10. Attorney's bond.

(a) Concurrently with the filing of the application provided for in section six of this article, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of the State of West Virginia for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in paragraph (b) of this section. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

(b) The bond shall be in the penal sum of $25,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands, and that he will not withdraw or appropriate to his own use from the funds of the insurer, any moneys or property to which he is not entitled under the power of attorney.

(c) The bond shall provide that it is not subject to cancellation unless thirty days' advance notice in writing of cancellation is given both the attorney and the commissioner.

(d) In lieu of such bond, the attorney may maintain on deposit with the State Treasurer through the office of the commissioner a like amount in cash or in value of securities qualified under this chapter as insurers' deposit investments, and subject to the same conditions as the bond.

(e) Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

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§33-21-11. Annual report.

(a) The annual report of a reciprocal insurer shall be made and filed by its attorney.

(b) The report shall be supplemented by such information as may be required by the commissioner relative to the affairs and transactions of the attorney insofar as they pertain to the reciprocal insurer.

WV Legislature

§33-21-12. Process and venue; annual fee.

(a) Concurrently with the filing of the application provided for by the terms of section six of this article, the attorney shall file with the commissioner an instrument in writing, executed by him for said subscribers, conditioned that upon the issuance of the license provided for in section seven of this article any action, suit or other proceeding arising out of any insurance contract or policy issued under such license, may be brought in the county of this state wherein the property insured was situated either at the date of the policy or at the time when the right of action accrued, or in the county of this state wherein the person insured had a legal residence at the date of his death or at the time the right of action accrued, and that service of any process or notice may be had upon the Secretary of State in all actions, suits or other proceedings in this state arising out of such policies, contracts, agreements or other business of insurance transacted under such license, and that said Secretary of State may accept service of any such process or notice.

(b) Such service or acceptance of service shall be valid and binding upon the attorney and upon all subscribers exchanging at any time reciprocal or interinsurance contracts through the attorney. Two copies of such process or notice, in addition to the original, shall be furnished the Secretary of State, and he shall file one copy, forward one copy to the attorney and return the original with his acceptance of service or for return of service. But no process or notice shall be served on the Secretary of State or accepted by him less than ten days before the return day thereof. Where the principal office of the attorney is located in this state, service of process may be had upon all subscribers by serving same upon the attorney at said office. Service of process shall not be had upon said subscribers or any of them in any suit or other proceeding in this state except in the manner provided in this section, and any action, suit, or other proceeding may be begun and prosecuted against or defended by them under the name or designation adopted by them.

(c) The attorney shall pay to the Secretary of State an annual fee of $20.

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§33-21-13. Fees and taxes.

(a) The attorney for each reciprocal insurer shall pay on behalf of such insurer all fees and taxes prescribed by this chapter for other insurers transacting like kinds of insurance, except that the amount of the premium tax shall be computed upon the gross premiums on business transacted in this state less premiums returnable because of cancellation and less amounts returned to subscribers or credited to their accounts as savings.

(b) In addition such attorney shall pay annually on behalf of such reciprocal insurer the fire marshal's tax provided by section twenty-four, article three, chapter twenty-nine of this code, to the extent such tax is applicable to the kinds of insurance transacted in this state by such reciprocal insurer.

(c) No reciprocal insurer shall be liable for any taxes except those described in this section and property taxes upon real and personal property, unless reciprocal insurers be specifically mentioned in the law imposing such taxes.

WV Legislature

§33-21-14. Who may be subscribers.

Individuals, partnerships, and corporations of this state may make application, enter into agreement for and hold policies or contracts in or with and be a subscriber of any domestic, foreign, or alien reciprocal insurer. Any public or private corporation now or hereafter created by or organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurance. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations. Any officer, representative, trustee, receiver, or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

WV Legislature

§33-21-15. Subscribers' advisory committee.

(a) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(b) Not less than two thirds of such committee shall be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.

(c) The committee shall:

(1) Supervise the finances of the insurer;

(2) Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;

(3) Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer;

(4) Have such additional powers and functions as may be conferred by the subscribers' agreement.

WV Legislature

§33-21-16. Subscribers' liability -- Generally.

(a) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several, and proportionate liability, and not joint.

(b) Except as to a nonassessable policy each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one nor more than ten times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in section twenty of this article.

(c) Each assessable policy issued by the insurer shall contain a statement of the contingent liability, set in type of the same prominence as the insuring clause.

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§33-21-17. Same -- On judgments.

(a) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty days.

(b) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

WV Legislature

§33-21-18. Assessments -- Generally.

(a) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee; or by the receiver, conservator, rehabilitator or liquidator, in liquidation proceedings of the insurer.

(b) Each such subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as computed in accordance with section twenty of this article, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(c) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom only charges not recurring upon the renewal or extension of the policy.

(d) No such subscriber shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or losses payable.

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§33-21-19. Same -- Time limit.

Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this article, if,

(a) While his policy is in force or within one year after its termination, he is notified by either the attorney or the receiver, conservator, rehabilitator or liquidator of his intentions to levy such assessment, or

(b) If an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while his policy is in force or within one year after its termination.

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§33-21-20. Same -- Maximum liability.

In the case of a domestic reciprocal insurer no one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a reciprocal insurer in any one calendar year, in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

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§33-21-21. Nonassessable policies.

(a) If a reciprocal insurer has a surplus of assets over all liabilities in an amount equal to the minimum capital stock generally required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee, the commissioner may issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as such surplus funds remain unimpaired.

(b) Upon impairment of such surplus, the commissioner may revoke such certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(c) The commissioner shall not authorize a reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

(d) No reciprocal insurer shall deliver or issue for delivery in this state assessable policies imposing a contingent liability upon subscribers, if such reciprocal insurer is issuing for delivery to subscribers in this or any other state nonassessable policies insuring risks of substantially the same hazard and class.

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§33-21-22. Distribution of unused premiums, savings or credits.

A reciprocal insurer may from time to time return to its subscribers any unused premiums, savings, or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers, but such distribution may vary as to classes of subscribers based upon the experience of such subscribers.

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§33-21-23. Advancement and repayment of funds.

The attorney or other parties may advance to a reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus.

WV Legislature

§33-21-24. Rules for determining financial condition of reciprocal insurer.

In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(a) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(b) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposit delinquent for ninety days shall first be charged against such surplus deposit.

(c) The surplus deposits of subscribers shall not be charged as a liability.

(d) All premium deposits delinquent less than ninety days shall be allowed as assets.

(e) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

(f) The contingent liability of subscribers shall not be allowed as an asset.

(g) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for the compensation of the attorney.

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§33-21-25. Distribution of assets to subscribers upon liquidation.

Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in section twenty- three of this article, and the return of any unused premium, savings, or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were such within the twelve months prior to the last termination of its license, according to such reasonable formula as the commissioner may approve.

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§33-21-26. Merger or conversion.

(a) A domestic reciprocal insurer upon affirmative vote of not less than two thirds of its subscribers who vote on such merger pursuant to due notice and the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(b) Such a stock or mutual insurer shall be subject to the same capital requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(c) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with section twenty-five of this article and a reasonable length of time within which to exercise such right.

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