# WEST VIRGINIA CODE CHAPTER 33 ARTICLE 23

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## §33-23-1. Scope of article.

Every fraternal benefit society shall be governed by the provisions of this article and by no other provisions of this chapter except such provisions as are specifically made applicable and referred to in this article.

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## §33-23-2. Applicability of other provisions.

Every fraternal benefit society shall be governed and be subject to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions); article two (Insurance Commissioner); article four (general provisions); section thirty, article six (fee for form and rate filing); article seven (assets and liabilities); article ten (rehabilitation and liquidation); article eleven (unfair trade practices); article twelve (agents, brokers, solicitors and excess lines); article thirteen (life insurance); article thirteen-a (variable contracts); article fifteen-a (long-term care insurance); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner's authority for companies considered to be in hazardous financial condition); article thirty-five(criminal sanctions for failure to report impairment); article thirty-seven(managing general agents); and article thirty-nine (disclosure of material transactions).

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## §33-23-2a. Applicability of insurance fraud prevention act.

Notwithstanding any provision of this code to the contrary, article forty-one of this chapter is applicable to fraternal benefit societies.

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## §33-23-3. Fraternal benefit societies defined.

Any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of subparagraph (2) of paragraph (a) of section thirty-four of this article whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this article, is hereby declared to be a fraternal benefit society. When used in this article the word "society," unless otherwise indicated, shall mean fraternal benefit society.

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## §33-23-4. Lodge system defined.

A society having a supreme legislative or governing body and subordinate lodges or branches by whatever name known, into which members are elected, initiated or admitted in accordance with its Constitution, laws, ritual and rules, which subordinate lodges or branches shall be required by the laws of the society to hold regular meetings at least once in each month, shall be deemed to be operating on the lodge system.

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## §33-23-5. Representative form of government defined.

A society shall be deemed to have a representative form of government when:

(a) It provides in its Constitution or laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members of such body as may be prescribed by the society's Constitution and laws;

(b) The representatives elected constitute a majority in number and have not less than two thirds of the votes nor less than the votes required to amend its Constitution and laws;

(c) The meetings of the supreme legislative or governing body and the election of officers, representatives or delegates are held as often as once in four calendar years;

(d) Each insured member shall be eligible for election to act or serve as a delegate to such meeting;

(e) The society has a board of directors charged with the responsibility for managing its affairs in the interim between meetings of its supreme legislative or governing body, subject to control by such body and having powers and duties delegated to it in the Constitution or laws of the society;

(f) Such board of directors is elected by the supreme legislative or governing body, except in case of filling a vacancy in the interim between meetings of such body;

(g) The officers are elected either by the supreme legislative or governing body or by the board of directors; and

(h) The members, officers, representatives or delegates shall not vote by proxy.

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## §33-23-6. Organization.

The organization of a domestic society shall be governed as follows:

(a) Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer, competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(1) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(2) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this article: Provided, That any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal or religious advantages may be set forth among the purposes of the society; and

(3) The names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

(b) Such articles of incorporation, duly certified copies of the Constitution, laws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year, such bond to be in an amount to be determined by the commissioner not to exceed the sum of $25,000 with sureties approved by the commissioner, shall be filed with the commissioner, who may require such further information as he deems necessary. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this article and all provisions of law have been complied with, the commissioner shall approve same in writing, whereupon the incorporators may file such approved articles with the Secretary of State of this state and receive a certificate of incorporation in the same manner as such certificates are issued to other nonstock corporations.

(c) No certificate granted under the provisions of this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the five hundred applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the certificate, or at the expiration of the extended period, unless the society shall have completed its organization and received a license as hereinafter provided.

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(d) Upon receipt of the certificate of incorporation, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates as provided by its Constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any death or disability benefit to any person until:

(1) Actual bona fide applications for death benefits have been secured aggregating at least $500,000 on not less than five hundred lives;

(2) All such applicants for death benefits shall have furnished evidence of insurability satisfactory to the society;

(3) Certificates of examinations or acceptable declarations of insurability have been duly filed and approved by the chief medical examiner of the society;

(4) Ten subordinate lodges or branches have been established into which the five hundred applicants have been admitted;

(5) There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

(6) It shall have been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least $2,500, all of which shall be credited to the fund or funds from which benefits are to be paid and no part of which may be used for expenses. Said advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within one year, as herein provided, such premiums shall be returned to said applicants.

(e) The commissioner may make such examination and require such further information as he deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to the society a license to transact insurance pursuant to the provisions of this article. The license shall be prima facie evidence of the existence of the society at the date of such license. The commissioner shall cause a record of such license to be made. A certified copy of such record may be given in evidence with like effect as the original license.

(f) Every society shall have the power to adopt a Constitution and laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of its members from time to time. It shall have the power to change,

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alter, add to or amend such Constitution and laws and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

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## §33-23-7. Retention of corporate powers by existing incorporated societies.

Any incorporated society licensed to transact insurance in this state at the time this article becomes effective may thereafter exercise all the rights, powers and privileges prescribed in this article and in its charter, articles of incorporation and license as far as consistent with this article. A domestic incorporated society shall not be required to reincorporate.

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## §33-23-8. Incorporation of existing voluntary associations.

(a) After one year from the effective date of this article, no unincorporated or voluntary association shall be permitted to transact business in this state.

(b) Any domestic voluntary association now licensed to transact insurance in this state may incorporate and shall receive from the commissioner a license as a fraternal benefit society when:

(1) It shall have completed its conversion to an incorporated society not later than one year from the effective date of this article;

(2) It has filed its articles of incorporation and has satisfied the other requirements described in section six of this article; and

(3) The commissioner shall have made such examination and procured whatever additional information he shall deem advisable.

(c) Every voluntary association so incorporated shall incur the obligations and enjoy the benefits thereof the same as though originally incorporated, and such corporation shall be deemed a continuation of the original voluntary association. The officers thereof shall serve through their respective terms as provided in its original articles of association, but their successors shall be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association shall not affect existing suits, claims or contracts.

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## §33-23-9. Office and meetings of domestic society.

The principal office of any domestic society shall be located in this state. The meetings of its supreme legislative or governing body may be held in any state, district, province or territory wherein such society has at least five subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state.

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## §33-23-10. Consolidations and mergers.

(a) A domestic society may make application to consolidate or merge with any other society by filing with the commissioner:

(1) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(2) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the commissioner but not earlier than December thirty-first, next preceding the date of the contract;

(3) A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme legislative or governing body of each society; and

(4) Evidence that at least sixty days prior to the action of the supreme legislative or governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official organ of each society.

(b) If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, he shall approve the contract and issue his certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval filed with the commissioner or, if the laws of such state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the insurance supervisory official of such state or territory and a certificate of such approval filed with the commissioner.

(c) Upon the consolidation or merger becoming effective as herein provided, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

(d) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the



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addressees.

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## §33-23-11. Conversion of society to mutual life insurer.

Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of this chapter for the initial licensing of a domestic mutual life insurer, if such plan of conversion has been approved by the commissioner. Such plan shall be prepared in writing setting forth in full the terms and conditions thereof. The board of directors shall submit such plan to the supreme legislative or governing body of such society at any regular or special meeting thereof, by giving a full, true and complete copy of such plan with the notice of such meeting. Such notice shall be given as provided in the laws of the society for the convocation of a regular or special meeting of such body, as the case may be. The affirmative vote of two thirds of all members of such body shall be necessary for the approval of such agreement. No such conversion shall take effect unless and until approved by the commissioner who may give such approval if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

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## §33-23-12. Qualifications for benefit membership.

(a) A society may admit to benefit membership any person not less than fifteen years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than six months after becoming a benefit member shall pass an additional medical examination, or make an additional declaration of insurability, as required by the society.

(b) Any person admitted prior to attaining the full age of twenty-one years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

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## §33-23-13. Amendment of articles of incorporation, Constitution or laws.

(a) A domestic society may amend its articles of incorporation, Constitution or laws in accordance with the provisions thereof by action of its supreme legislative or governing body at any regular or special meeting thereof or, if its articles of incorporation, Constitution or laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its articles of incorporation, Constitution or laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges or branches. No amendment submitted for adoption by referendum shall be adopted unless, within six months from the date of submission thereof, a majority of all of the voting members of the society shall have signified their consent to such amendment by one of the methods herein specified.

(b) No amendment to the articles of incorporation, Constitution or laws of any domestic society shall take effect unless approved by the commissioner who shall approve such amendment if he finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects and purposes of the society. Unless the commissioner shall disapprove any such amendment within sixty days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case he disapproves such amendment, the reasons therefor shall be stated in such written notice.

(c) Within ninety days from the approval thereof by the commissioner, all such amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official organ of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof, have been furnished the addressee.

(d) Every foreign or alien society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments of, or additions to, its articles of incorporation, Constitution or laws within ninety days after the enactment of same.

(e) Printed copies of the Constitution or laws as amended, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof.

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## §33-23-14. Operation of charitable, benevolent or educational institutions.

(a) It shall be lawful for a society to create, maintain and operate charitable, benevolent or educational institutions for the benefit of its members and their families and dependents and for the benefit of children insured by the society. For such purpose it may own, hold or lease personal property or real property located within or without this state, with necessary buildings thereon. Such property shall be reported in every annual statement but shall not be allowed as an admitted asset of such society.

(b) Maintenance, treatment and proper attendance in any such institution may be furnished free or a reasonable charge may be made therefor, but no such institution shall be operated for profit. The society shall maintain a separate accounting of any income and disbursements under this section and report them in its annual statement. No society shall own or operate funeral homes or undertaking establishments.

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## §33-23-15. Payment of benefits other than insurance benefits.

(a) A society may pay benefits, other than insurance benefits to its members from any special account or fund maintained for such purpose; provided that if such benefits are of such a nature that they could constitute benefits within the classes of insurance set forth in section seventeen of this article, a society making such payments may not:

(1) Make any separate charge therefor;

(2) Issue any certificate, policy or other document promising such payments;

(3) Provide in its Constitution, laws or any other document that such payments may be received by the member as a matter of right; or

(4) Advertise such payments as insurance or as payments to which the member has any right.

(b) The society shall maintain a separate accounting of all disbursements made under this section and report them in its annual statement.

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## §33-23-16. No personal liability for payment of benefits.

The officers and members of the supreme, grand or any subordinate body of a society shall not be personally liable for payment of any benefits provided by a society.

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## §33-23-17. Kinds of benefits authorized.

(1) A society licensed in this state may provide for the payment of:

(a) Death benefits in any form;

(b) Endowment benefits;

(c) Annuity benefits;

(d) Temporary or permanent disability benefits as a result of disease or accident;

(e) Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident;

(f) Monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of $300.

(2) Such benefits may be provided on the lives of members or, upon application of a member, on the lives of the member's family, including the member, the member's spouse and minor children, in the same or separate certificates.

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## §33-23-18. Benefits on lives of children.

(a) A society may provide for benefits on the lives of children under the minimum age for adult membership but not greater than twenty-one years of age at time of application therefor, upon the application of some adult person, as its laws or rules may provide, which benefits shall be in accordance with the provisions of paragraph (1) of section seventeen of this article. A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

(b) A society shall have power to provide for the designation and changing of designation of beneficiaries in the certificates providing for such benefits and to provide in all other respects for the regulation, government and control of such certificates and all rights, obligations and liabilities incident thereto and connected therewith.

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## §33-23-19. Nonforfeiture benefits, cash surrender values, loans and options.

(a) A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans and such other options as its laws may permit. As to certificates issued on and after the effective date of this article, a society shall grant at least one paid-up nonforfeiture benefit.

(b) In the case of certificates other than those for which reserves are computed on the Commissioners 1941 Standard Ordinary Mortality Table or the 1941 Standard Industrial Table, or any more recent table made applicable to life insurance companies and duly approved by the commissioner, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the excess, if any, of (1) over (2) as follows:

(1) The reserve under the certificate determined on the basis specified in the certificate; and

(2) The sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrender charge equal to two and one-half percent of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be the ultimate face amount of the certificate, if death benefits provided therein are graded.

(c) However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American Men Ultimate Table of Mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than one hundred thirty percent of those shown by the mortality table specified in the certificate for the computation of the reserve.

(d) In the case of certificates for which reserves are computed on the Commissioners 1941 Standard Ordinary Mortality Table or the 1941 Standard Industrial Table, or any more recent table made applicable to life insurance companies and duly approved by the commissioner, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this state applicable to life insurance companies issuing policies containing like insurance benefits based upon such tables.

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## §33-23-20. Beneficiaries.

(a) The member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the Constitution, laws or rules of the society. Every society by its Constitution, laws or rules may limit the scope of beneficiaries and shall provide that no beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the insurance contract.

(b) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, provided the portion so paid shall not exceed the sum of $500.

(c) If, at the death of any member, there is no lawful beneficiary to whom the insurance benefits shall be payable, the amount of such benefits, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased member.

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## §33-23-21. Benefits not liable to process.

No money or other benefit, charity, relief or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

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## §33-23-22. Certificates and agreement with members.

(a) Every society licensed in this state shall issue to each benefit member a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the charter or articles of incorporation, the Constitution and laws of the society, the application for membership, and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the agreement, as of the date of issuance, between the society and the member, and the certificate shall so state. A copy of the application for membership and of the declaration of insurability, if any, shall be endorsed upon or attached to the certificate.

(b) All statements purporting to be made by the member shall be representations and not warranties. Any waiver of this provision shall be void.

(c) Any changes, additions or amendments to the charter or articles of incorporation, Constitution or laws duly made or enacted subsequent to the issuance of the certificate, shall bind the member and the beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the member as of the date of issuance.

(d) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received as evidence of the terms and conditions thereof.

(e) A society shall provide in its Constitution or laws and in its certificates that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the member to the society the amount of the member's equitable proportion of such deficiency as ascertained by its board, and that if the payment be not made it shall stand as an indebtedness against the certificate and draw interest not to exceed five percent per annum compounded annually.

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**§33-23-23. Approval of certificates; standard and prohibited provisions.**

(a) No life benefit certificate shall be delivered or issued for delivery in this state unless a copy of the form shall have been filed with the commissioner and approved by him as conforming to the requirements of this section and not inconsistent with any other provisions of law applicable thereto. A certificate shall be deemed approved unless disapproved by the commissioner within sixty days of the date of such filing.

(b) The certificate shall contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member:

(1) Title on the face and filing page of the certificate clearly and correctly describing its form;

(2) A provision stating the amount of rates, premiums or other required contributions, by whatever name known, which are payable by the insured under the certificate;

(3) A provision that the member is entitled to a grace period of not less than a full month (or thirty days at the option of the society) in which the payment of any premium after the first, may be made. During such grace period the certificate shall continue in full force, but in case the certificate becomes a claim during the grace period before the overdue payment is made, the amount of such overdue payment or payments may be deducted in any settlement under the certificate;

(4) A provision that the member shall be entitled to have the certificate reinstated at any time within three years from the due date of the premium in default, unless the certificate has been completely terminated through the application of a nonforfeiture benefit, cash surrender value or certificate loan, upon the production of evidence of insurability satisfactory to the society and the payment of all overdue premiums and any other indebtedness to the society upon the certificate, together with interest on such premiums and such indebtedness, if any, at a rate not exceeding six percent per annum compounded annually;

(5) Except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of fifteen years or less expiring before age sixty-six, a provision that, in the event of default in payment of any premium after three full years' premiums have been paid or after premiums for a lesser period have been paid if the contract so provides, the society will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of such value as specified in this article. The certificate may provide, if the society's laws so specify or if the member shall so elect prior to the expiration of the grace period of any overdue premium, that default shall not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate;

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(6) A provision that one paid-up nonforfeiture benefit as specified in the certificate shall become effective automatically unless the member elects another available paid-up nonforfeiture benefit, not later than sixty days after the due date of the premium in default;

(7) A statement of the mortality table and rate of interest used in determining all paid-up nonforfeiture benefits and cash surrender options available under the certificate, and a brief general statement of the method used in calculating such benefits;

(8) A table showing in figures the value of every paid-up nonforfeiture benefit and cash surrender option available under the certificate for each certificate anniversary either during the first twenty certificate years or during the term of the certificate whichever is shorter;

(9) A provision that the certificate shall be incontestable after it has been in force during the lifetime of the member for a period of two years from its date of issue except for nonpayment of premiums, violation of the provisions of the certificate relating to military, aviation, or naval service and violation of the provisions relating to suspension or expulsion as substantially set forth in the certificate. At the option of the society, supplemental provisions relating to benefits in the event of temporary or permanent disability or hospitalization and provisions which grant additional insurance specifically against death by accident or accidental means, may also be excepted. The certificate shall be incontestable on the ground of suicide after it has been in force during the lifetime of the member for a period of two years from date of issue. The certificate may provide, as to statements made to procure reinstatement, that the society shall have the right to contest a reinstated certificate within a period of two years from date of reinstatement with the same exceptions as herein provided;

(10) A provision that in case the age of the member or of the beneficiary is considered in determining the premium and it is found at any time before final settlement under the certificate that the age has been misstated, and the discrepancy and premium involved have not been adjusted, the amount payable shall be such as the premium would have purchased at the correct age; but if the correct age was not an insurable age under the society's charter or laws, only the premium paid to the society, less any payments previously made to the member, shall be returned or, at the option of the society, the amount payable under the certificate shall be such as the premium would have purchased at the correct age according to the society's promulgated rates and any extension thereof based on actuarial principles;

(11) A provision or provisions which recite fully, or which set forth the substance of, all sections of the charter, Constitution, laws, rules or regulations of the society, in force at the time of issuance of the certificate, the violation of which will result in the termination of, or in the reduction of, the benefit or benefits payable under the certificate;

(12) If the Constitution or laws of the society provide for expulsion or suspension of a member, any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentations in such member's application for membership shall have the privilege of maintaining his insurance in force by continuing

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payment of the required premium; and

(13) In the case of a certificate issued by a foreign or alien society, a provision that the rights or obligations of the member or of any person rightfully claiming under the certificate shall be governed by the laws of this state.

(c) Any of the foregoing provisions set forth in paragraph (b) of this section, or portions thereof, not applicable by reason of the plan of insurance or because the certificate is an annuity certificate may, to the extent inapplicable, be omitted from the certificate.

(d) No life benefit certificate shall be delivered or issued for delivery in this state containing in substance any of the following provisions:

(1) Any provision limiting the time within which any action at law or in equity may be commenced to less than two years after the cause of action shall accrue;

(2) Any provision by which the certificate shall purport to be issued or to take effect more than six months before the original application for the certificate was made, except in case of transfer from one form of certificate to another in connection with which the member is to receive credit for any reserve accumulation under the form of certificate from which the transfer is made; or

(3) Any provision for forfeiture of the certificate for failure to repay any loan thereon or to pay interest on such loan while the total indebtedness, including interest, is less than the loan value of the certificate.

(e) The word "premiums" as used in this article means premiums, rates, or other required contributions by whatever name known.

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## §33-23-24. Filing and approval of accident and sickness insurance certificates.

(a) No domestic, foreign or alien society licensed in this state shall issue or deliver in this state any certificate or other evidence of any contract of accident and sickness insurance unless and until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the commissioner and approved by him or her as conforming to reasonable rules from time to time in effect and as not inconsistent with any other provisions of law applicable thereto. The commissioner shall, within a reasonable time after the filing of any form, notify the society filing the form of the approval or disapproval of the form. The commissioner may in his or her discretion approve any form which contains provisions more favorable to the members than the ones required.

(b) Pursuant to chapter twenty-nine-a of this code, the commissioner may promulgate rules necessary to implement the provisions of this section, and such rules shall conform, as far as practicable, to the provisions of article fifteen (Accident and Sickness Insurance) and article sixteen (Group Accident and Sickness Insurance) of this chapter.

(1) For any certificate or other evidence of coverage issued before July 1, 1997, and for any certificate or other evidence of coverage under a health benefit plan issued on or after July 1, 1997, other than in connection with a group health plan, where the commissioner deems inapplicable, either in part or in their entirety, the provisions of articles fifteen or sixteen of this chapter, the commissioner may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member. For purposes of this subsection, the terms "group health plan" and "health benefit plan" have the meanings set forth in section one-a, article sixteen of this chapter.

(2) For any certificate or other evidence of individual coverage issued or renewed on or after July 1, 1997, the society shall comply with all provisions of article fifteen of this chapter. For any certificate or other evidence of coverage under a health benefit plan issued in connection with a group health plan on or after July 1, 1997, the society shall comply with all provisions of article sixteen of this chapter, and for a health benefit plan issued to a small employer, as defined in section two, article sixteen-d of this chapter, with all provisions of article sixteen-d of this chapter.

(c) Any filing made hereunder shall be deemed approved unless disapproved within sixty days from the date of such filing.

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## §33-23-25. Waiver of laws and Constitution of society.

The Constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and Constitution of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

WV Legislature

## §33-23-26. Reinsurance.

A domestic society may, by an authorized reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer (other than another fraternal benefit society) having the power to make such reinsurance; but no such society may reinsure substantially all of its insurance in force without the written permission of the commissioner.

WV Legislature

## §33-23-27. Licensing of foreign and alien societies.

(a) No foreign or alien society shall transact business in this state without a license issued by the commissioner. Any such society may be licensed to transact business in this state upon filing with the commissioner:

(1) A duly certified copy of its charter or articles of incorporation;

(2) A copy of its Constitution and laws, certified by its secretary or corresponding officer;

(3) A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the commissioner;

(4) A certificate from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;

(5) Copies of its certificate forms; and

(6) Such other information as he may deem necessary; and upon a showing that its assets are invested in accordance with the provisions of this article.

(b) No license shall be issued to a foreign or alien society desiring admission to this state unless such society has the qualifications required of domestic societies organized under this article.

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## §33-23-28. Term of license; renewal, refusal, revocation or suspension; penalty in lieu thereof; reissuance.

The term of license, renewal thereof, refusal to license, revocation or suspension of license or penalty in lieu thereof, and reissuance of license of all societies shall be governed by the provisions of sections eight, nine, ten, and eleven of article three of this chapter, to the same extent that such sections are applicable to other insurers.

WV Legislature

## §33-23-29. Fees; exemption of funds and assets from taxation.

(a) Each society shall pay to the commissioner an annual license fee of $50 and a fee of $25 for filing the annual statement of the society, all fees so collected to be used for the purposes specified in section thirteen, article three of this chapter.

(b) Every society licensed under this article is hereby declared to be a charitable and benevolent institution, and all of its funds and assets shall be exempt from all state, county, district and municipal taxes except taxes on real property and office equipment.

WV Legislature

## §33-23-30. Use of funds.

(a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

(b) A society may create, maintain, invest, disburse and apply any special funds or funds necessary to carry out any purpose permitted by the laws of such society.

(c) Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued after one year from the effective date of this article, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses.

WV Legislature

## §33-23-31. Investments.

(a) A domestic society shall invest its funds only in the investments that are authorized by sections ten through twenty, inclusive, article eight of this chapter for the investment of the assets of domestic insurers.

(b) Foreign and alien societies shall have investments of the same general quality as required of domestic societies, except that other investments authorized by the laws of the foreign or alien society's state or country of domicile may be recognized as assets in the discretion of the commissioner.

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**§33-23-32. Reports and synopses of annual statements; valuations.**

In addition to the annual statement required by section fourteen, article four of this chapter, reports shall be filed and synopses of annual statements shall be published in accordance with the provisions of this section as follows:

(a) A synopsis of its annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society not later than June 1 of each year, or, in lieu thereof, such synopsis may be published in the society's official publication.

(b) As a part of the annual statement required of each society, it shall, on or before March 1, file with the commissioner a valuation of its certificates in force on December thirty-first last preceding: Provided, That the commissioner may, in his discretion for cause shown, extend the time for filing such valuation for not more than two calendar months. Such report of valuation shall show, as reserve liabilities, the differences between the present midyear value of the promised benefits provided in the certificates of such society in force and the present midyear value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present midyear value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the net tabular value. Such net tabular value as to certificates issued prior to one year after the effective date of this article shall be determined in accordance with the provisions of law applicable prior to the effective date of this article and as to certificates issued on or after one year from the effective date of this article shall not be less than the reserves determined according to the commissioner's reserve valuation method as hereinafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

(c) Reserves according to the commissioner's reserve valuation method for the life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such certificates, over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of (1) over (2), as follows:

(1) A net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate year, divided by the present value, at the date of issue,

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of an annuity of one per annum payable on the first and each subsequent anniversary of such certificate on which a premium falls due: Provided, however, That such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such certificate; and

(2) A net one-year term premium for such benefits provided for in the first certificate year.

(d) Reserves according to the commissioner's reserve valuation method for (1) life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums, (2) annuity and pure endowment benefits, (3) disability and accidental death benefits in all certificates and contracts, and (4) all other benefits except life insurance and endowment benefits, shall be calculated by a method consistent with the principles of subdivision (c) of this section.

(e) The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in the following subdivision.

(f) Such valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(g) The minimum standards of valuation for certificates issued prior to one year from the effective date of this article shall be those provided by the law applicable immediately prior to the effective date of this article but not lower than the standards used in the calculating of rates for such certificates.

(h) The minimum standard of valuation for certificates issued after one year from the effective date of this article shall be three and one-half percent interest and the following tables:

(1) For certificates of life insurance -- American Men Ultimate Table of Mortality, with Bowerman's or Davis' Extension thereof or with the consent of the commissioner, the Commissioners 1941 Standard Ordinary Mortality Table or the Commissioners 1941 Standard Industrial Table of Mortality;

(2) For annuity certificates, including life annuities provided or available under optional modes of settlement in such certificates -- the 1937 Standard Annuity Table;

(3) For disability benefits issued in connection with life benefit certificates -- Hunter's Disability Table, which for active lives shall be combined with a mortality table permitted for calculating the reserves on life insurance certificates, except that the table known as Class III Disability Table (1926), modified to conform to the contractual waiting period, shall be used in computing reserves for disability benefits under a contract which presumes that total

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disability shall be considered to be permanent after a specified period;

(4) For accidental death benefits issued in connection with life benefit certificates -- the Inter-Company Double Indemnity Mortality Table combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(5) For noncancelable accident and sickness benefits -- the Class III Disability Table (1926) with conference modifications or, with the consent of the commissioner, tables based upon the society's own experience: Provided, That any society may value its certificates in accordance with valuation standards authorized by the laws of this state for the valuation of policies issued by life insurance companies.

(i) The commissioner may, in his discretion, accept other standards for valuation if he finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in his discretion, vary the standards of mortality applicable to all certificates of insurance on substandard lives or other extra hazardous lives by any society authorized to do business in this state. Whenever the mortality experience under all certificates valued on the same mortality table is in excess of the expected mortality according to such table for a period of three consecutive years, the commissioner may require additional reserves when deemed necessary in his judgment on account of such certificates.

(j) Any society, with the consent of the insurance supervisory official of the state of domicile of the society and under such conditions, if any, which he may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any insured member shall not be affected thereby.

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## §33-23-33. Agents.

Commencing on June 1, 1989, agents for fraternal benefit societies shall be required to be licensed pursuant to chapter thirty-three of the Code of West Virginia, 1931, as amended: Provided, That any person who was acting as or serving in the role of an agent for a fraternal benefit society on or before July 1, 1989, shall be exempt from the examination requirement of subsection (e), section two, article twelve of this chapter: Provided, however, That any person who is a salaried officer, employee or member of a fraternal benefit society and who as an occasional and incidental duty of such position may solicit a fraternal insurance contract from a member of such fraternal benefit society such person shall be exempt from the continuing education requirements otherwise made subject to insurance agents by this chapter and the examination requirements of subsection (e), section two, article twelve of this chapter if such person receives no commission or other compensation based directly on such solicitation of fraternal insurance contracts and if such person makes no solicitation of insurance of any kind to or from persons who are not members of such fraternal benefit society. For the purpose of this article the solicitation of a fraternal insurance contract by such salaried officer, employee, or member from a new member of such society simultaneously with such new member's joining such society shall be deemed the solicitation of a member.

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**§33-23-34. Exemption of certain societies.**

(a) Nothing contained in this article shall be so construed as to affect or apply to:

(1) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

(2) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business insuring only their own members, their families and descendants of members and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

(3) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than $400,000 or disability benefits of not more than $350,000 to any person in any one year, or both; or

(4) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than $2,000 or for disability benefits of not more than $350 to any one person in any one year, or both.

(b) Any such society or association described in subdivision (3) or (4), subsection (a) of this section, which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in subdivision (4) which has more than one thousand members, shall not be exempted from the provisions of this article but shall comply with all requirements thereof.

(c) No society which, by the provisions of this section, is exempt from the requirements of this article, except any society described in subdivision (2), subsection (a) of this section, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

(d) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and rules of this article except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

(e) The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this article.

(f) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of this chapter.

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## §33-23-35. Continuum of care services.

Any society which, on or after July 1, 1986, delivers or issues for delivery in this state any policy under the provisions of subdivision (e), subsection (1), section seventeen of this article, shall make available for purchase, at a reasonable rate, supplemental insurance coverage for continuum of care services pursuant to article five-d, chapter sixteen of this code: Provided, That any insurance carrier required to provide supplemental insurance coverage for continuum of care services hereunder shall not be required to expend funds for underwriting such supplemental coverage until the continuum of care board, in cooperation with the West Virginia state Insurance Commissioner, shall have completed a written master plan related to insurance coverage as set forth in section five, article five-d, chapter sixteen of the Code of West Virginia, 1931, as amended, including, but not limited to, the specific standards and coverages to be provided in such supplemental coverage: Provided, however, That a public hearing shall be held pursuant to the provisions of chapter twenty-nine-a of this code applicable to such proceedings prior to the considerations of the aforesaid plan by said board. The rates for continuum of care coverage shall accurately reflect the cost of such coverage and shall not be subsidized by the rate structure for any other coverage.

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