WEST VIRGINIA CODE CHAPTER 33 ARTICLE 3

WV Legislature

§33-3-1. License required.

(a) No person may act as an insurer and no insurer may transact insurance in West Virginia except as authorized by a valid cense issued by the commissioner, except as to the transactions as are expressly otherwise provided for in this chapter.

(b) No license is required for an insurer, formerly holding a valid license, to enable it to investigate and settle losses under its policies lawfully written in West Virginia while the license was in effect and as authorized by the commissioner, to collect premiums, pay applicable servicing commissions to agents of record and otherwise service such policies, or to liquidate the assets and liabilities of the insurer as may have resulted from its former authorized operations in West Virginia: Provided, That nothing in this section allows an insurer to issue new policies or renew policies of insurance or collect premiums on those policies unless the insurer is authorized by a valid license issued by the commissioner, except as to the transactions that are otherwise allowed in this chapter.

(c) An insurer not transacting new insurance business in West Virginia but collecting premiums on and servicing of policies in force as to residents of or risks located in West Virginia, and where the policies were originally issued on nonresidents of or risks located outside of this state, is transacting insurance in West Virginia for the purpose of premium and annuity tax requirements but is not required to have a license therefor.

(d) A domestic insurer or a foreign insurer from offices or by personnel or facilities located in this state may not solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting license granted to it by the commissioner authorizing it to transact the same kind or kinds of insurance in this state.

(e) Any officer, director, agent, representative or employee of any insurer who willfully authorizes, negotiates, makes or issues any insurance contract in violation of this section is subject to the provisions set forth in article forty-four of this chapter.

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§33-3-2. Qualifications for license.

(a) To qualify for a license to transact insurance in West Virginia an insurer must be otherwise in compliance with the provisions of this chapter and with its charter, and must be an incorporated stock insurer, or an incorporated mutual insurer or a reciprocal insurer.

(b) No foreign insurer may be authorized to transact insurance in this state if it is domiciled in a state that does not have reserve requirements that are equal to or greater than those required by article seven of this chapter, as applicable to the kind or kinds of insurance transacted by the insurer, wherever transacted in the United States of America, or which transacts business anywhere in the United States of America on the assessment plan, the stipulated premium plan or any similar plan.

(c) No insurer may be authorized to transact a kind of insurance in this state unless duly authorized or qualified to transact such insurance in the state or country of its domicile.

(d) No insurer may be authorized to transact in this state any kind of insurance which is not defined in section ten, article one of this chapter.

(e) No authority to transact insurance may be granted or continued to any insurer that is in arrears to the state for fees, licenses, taxes, assessments, fines or penalties accrued on insurance previously transacted in this state.

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§33-3-3. Prerequisites to issuance of charter for domestic insurer.

The Secretary of State of this state shall not issue a certificate of incorporation to any insurer until the commissioner shall have examined the charter of such insurer and approved same in writing upon being satisfied that such insurer is in a position to comply with the provisions of this chapter and that the incorporation and licensing of such insurer is in the public interest, and unless such charter shall provide that such insurer shall maintain its principal place of business in this state.

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§33-3-4. Charter, documents and information to be filed.

Every insurer applying for an initial license shall file with the commissioner accompanying its application:

(a) A certified copy of its charter with all amendments;

(b) A certified copy of its bylaws with all amendments;

(c) A copy of its annual statement as of December thirty- first last preceding;

(d) A copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory official of the state of domicile of a foreign insurer or the state of entry into the United States of an alien insurer;

(e) If a foreign or alien insurer, a certificate of the public official having supervision of insurance in the state or country of domicile of such insurer showing that it is authorized to transact the kinds of insurance proposed to be transacted in West Virginia;

(f) If an alien insurer, a copy of the appointment and authority of its United States manager;

(g) Certificate of deposit where deposits are required by this chapter;

(h) Such other information and documents as the commissioner deems necessary for the protection of policyholders or to assure compliance with this chapter.

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§33-3-5.

Repealed.

Acts, 1993 Reg. Sess., Ch. 67.

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§33-3-5a.

Repealed.

Acts, 1993 Reg. Sess., Ch. 67.

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§33-3-5b. Capital and surplus requirements.

(a) No insurer shall hereafter be licensed to transact the business of insurance in the State of West Virginia unless it has fully paid in capital stock, if a stock insurer, or surplus, if a mutual insurer, of at least $1 million. In addition, each such insurer shall have and maintain additional surplus funds of at least $1 million: Provided, That insurers duly licensed to transact insurance in West Virginia prior to the effective date of this section whose capital and surplus requirements are increased by virtue of this section shall have until January 1, 1993, to meet such increased requirements. Such capital and surplus shall be unencumbered.

(b) The commissioner may for the protection of the policyholders and the general public of this state require an insurer to maintain funds in excess of the amounts required by subsection (a) of this section, due to the amount, kind or combination of kinds of insurance transacted by the insurer. Any additional amounts required shall be based upon all the kinds of insurance transacted by the insurer in all areas in which it operates or proposes to operate, whether or not only a portion of the kinds of insurance are to be transacted in this state. Failure of an insurer to maintain funds as ordered by the commissioner is grounds for suspension, revocation, refusal or nonrenewal of the insurer's license.

(c) An order issued pursuant to the provisions of this section is subject to review pursuant to applicable state administrative proceedings under article two of this chapter.

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§33-3-6. Property and casualty, financial guaranty and mortgage guaranty insurers - Deposit requirements.

The commissioner shall not issue a license to any insurer unless it has deposited and maintained in trust with the state Treasurer, for the protection of its policyholders or its policyholders and creditors, cash or government securities eligible for the investment of capital funds of domestic insurers (of the type described in paragraph (A) or (B), subdivision (1), subsection (a), section eleven, article eight of this chapter or paragraph (A), (B) or (C), subdivision (3) of said subsection) under this chapter in the amount of $100,000; except:

(a) As to foreign insurers in lieu of the deposit or part of a deposit with the state Treasurer, the commissioner may accept the current certificate of the state insurance supervisory official of any other state that a like deposit by the insurer is being maintained in public custody or in a depository approved by the supervisory official in that state in trust for the purpose of protection of all policyholders or policyholders and creditors of the insurer in the United States.

(b) As to alien insurers in lieu of the deposit or part of a deposit with the state Treasurer, the commissioner may accept evidence satisfactory to him or her that the insurer maintains within the United States in public depositories, or in trust institutions within the United States approved by the commissioner, assets available for discharge of its United States insurance obligations which are in an amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States, together with an amount equal to the deposit required under this section for other insurers requesting license to transact like kinds of insurance.

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§33-3-7. Issuance of license to transact insurance; kinds of insurance authorized to be transacted.

(a) Upon receiving the application and supporting documents required by section four of this article, if the commissioner is satisfied that an insurer has complied with the terms of its charter and the provisions of this chapter and other laws of this state and that such insurer is solvent and will transact insurance in a legal, proper and just manner, he or she may issue to such insurer a license authorizing it to transact insurance in this state. Such license may authorize an insurer which otherwise qualifies therefor to transact life and/or accident and sickness insurance or an insurer other than a life insurer to transact any of the kinds of insurance other than life for which it otherwise qualifies. However, as to any life insurer which, immediately prior to the effective date of this chapter, lawfully held a license granting to it the right to transact in West Virginia additional kinds of insurance other than life and accident and sickness, the commissioner may continue to license said insurer to transact the same kinds of insurance as those specified in such prior license so long as such insurer is otherwise in compliance with this chapter.

(b) A foreign insurer that obtains a license pursuant to the provisions of this section may transact the business of insurance in this state without obtaining the certificate of authority from the Secretary of State otherwise required by the provisions of section 1501, article fifteen, chapter thirty-one-d of this code.

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§33-3-8. Expiration of license; renewal.

All licenses of insurers shall expire at midnight on the May thirty-first next following the date of issuance. The commissioner shall renew annually the licenses of all insurers who qualify and make application therefor upon a form prescribed by the commissioner.

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§33-3-9. Refusal to license.

The commissioner may refuse to license an insurer when he determines that an insurer has not complied with the laws of this state or that it is not in the best interest of the people of this state that such insurer be licensed or that such insurer would transact business in this state in an improper, illegal or unjust manner. In such event the commissioner shall enter an order refusing such license, and the applicant therefor may demand a hearing in the manner provided in article two of this chapter.

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§33-3-10. Mandatory refusal, revocation or suspension.

The commissioner after notice and hearing shall refuse to renew or shall revoke or suspend the license of any insurer:

(a) If such action is required by any provision of this chapter;

(b) If the insurer no longer meets the requirements for the license originally granted, because of deficiency of assets or otherwise.

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§33-3-11. Discretionary refusal, revocation or suspension; penalty in lieu thereof; reissuance.

(a) The commissioner may after notice and hearing refuse to renew, or may revoke or suspend the license of an insurer, in addition to other grounds therefor in this chapter, if the insurer:

(1) Violates any provision of this chapter other than those as to which refusal, suspension or revocation is mandatory;

(2) Fails to comply with any lawful rule, regulation or order of the commissioner;

(3) Is transacting insurance in an illegal, improper or unjust manner;

(4) Is found by the commissioner to be in an unsound condition or in such condition as to render its further transaction of insurance in West Virginia hazardous to its policyholders or to the people of West Virginia;

(5) Compels insureds under its policies to accept less than the amount due them or to bring suit against it to secure full payment when it has no substantial defense;

(6) Refuses to be examined or to produce its accounts, records and files for examination by the commissioner when required;

(7) Fails to pay any final judgment rendered against it in West Virginia within thirty days after the judgment became final or time for appeal expired, whichever is later;

(8) Fails to pay when due to the State of West Virginia any taxes, fees, charges or penalties required by this chapter.

(b) In lieu of refusing to renew, revoking or suspending the license of an insurer in any case except where such action is mandatory, the commissioner may, by order, require the insurer to pay to the State of West Virginia a penalty in a sum not exceeding $10,000, and upon the failure of the insurer to pay such penalty within thirty days after notice thereof, the commissioner may revoke or suspend the license of such insurer.

(c) When any license has been revoked or suspended or renewal thereof refused, the commissioner may reissue, terminate the suspension or renew such license when he is satisfied that the conditions causing such revocation, suspension or refusal to renew have ceased to exist and are unlikely to recur.

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§33-3-12. Deceptive, misleading or conflicting names of insurers.

No insurer shall be licensed to transact insurance in West Virginia which has or uses a name so similar to that of any insurer already so licensed as to cause uncertainty or confusion or which tends to deceive or mislead as to the type of organization of the insurer; except that in case of conflict of names between two insurers the commissioner may permit or require the newly licensed insurer to use in West Virginia such supplementation or modification of its name as is reasonably necessary to avoid such conflict.

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§33-3-13. Fees and charges.

(a) Except where it is otherwise specially provided, the commissioner shall demand and receive the following fees from all insurers: For annual fee for each license, $200; for receiving and filing annual reports, $100; for valuation of policies of life insurers organized under the laws of this state, one and one-half cents for each $1,000 of insurance; for valuation of policies of life insurers organized under the laws of any other state licensed to transact insurance in this state the rate for each $1,000 of insurance valued as is imposed by the other state upon any similar insurer organized under the laws of this state licensed to transact insurance in the other state; for filing certified copy of articles of incorporation, $50; for filing copy of its charter, $50; for filing statements preliminary to admission, $100; for filing any additional paper required by law or furnishing copies thereof, $1; for every certificate of valuation, copy of report or certificate of condition of company to be filed in any other state, $15; for each licensed agent, $25. The commissioner may by regulation set reasonable charges for printed forms for the annual statements required by law. He may sell at cost publications purchased by, or printed on behalf of the commissioner.

(b) Such fees and charges collected by the commissioner under the provisions of this section or elsewhere in this chapter and designated for use by the commissioner for the operation of the department of insurance or for the purposes of this section, shall be paid into a special revenue account, hereby created in the State Treasury, to be expended and used by the commissioner, upon his requisition and after appropriation by the Legislature, for the operation of the department of insurance. Notwithstanding any provisions in this code to the contrary, the commissioner may expend, in accordance with the provisions of section two-a, article twelve of this chapter, from the special revenue account established pursuant to this section, amounts necessary to establish and maintain a system of continuing education for agents as provided in section two-a, article twelve of this chapter.

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§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue funds created.

(a) Every insurer transacting insurance in West Virginia shall file with the commissioner, on or before March 1, each year, a financial statement made under oath of its president or secretary and on a form prescribed by the commissioner. The insurer shall also, on or before March 1 of each year subject to the provisions of §33-3-14c of this code, under the oath of its president or secretary, make a premium tax return for the previous calendar year on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected, and received by it during the previous calendar year on policies covering risks resident, located, or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly payments as required to be made pursuant to the provisions of §33-3-14c of this code, if any, less any adjustments to the gross amount of the direct premiums made during the calendar year, if any, and transmit with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the taxable premium and also includes any additional tax due under §33-3-14a of this code. All taxes, except those received on write your own federal flood insurance premium taxes or private market flood insurance premium taxes, received by the commissioner shall be paid into the insurance tax fund created in §33-3-14(b) of this code.

(b) There is created in the State Treasury a special revenue fund, administered by the treasurer, designated the "insurance tax fund". This fund is not part of the General Revenue Fund of the state. It consists of all amounts deposited in the fund pursuant to §33-3-14(a), §33-3-14a, §33-3-15, and §33-3-17 of this code, any appropriations to the fund, all interest earned from investment of the fund, and any gifts, grants, or contributions received by the fund: *Provided*, That this subsection shall not apply to funds received on federal flood insurance premium taxes or private market flood insurance premium taxes, which are subject to §33-3-14(c) of this code. The treasurer shall, no later than the last business day of each month, transfer amounts from the insurance tax fund to the General Revenue Fund that the treasurer determines are not necessary for making premium tax refunds under this article or §33-43-1 *et seq*. of this code.

(c) There is created in the State Treasury a special revenue fund, administered by the treasurer, designated the "flood insurance tax fund". This fund is not part of the General Revenue Fund of the state. All taxes collected pursuant to §33-3-14(a) of this code from federal flood insurance policy premium taxes or private market flood insurance premium taxes shall be deposited into the flood insurance tax fund. The flood insurance tax fund shall contain collections, any appropriations to the fund, and any gifts, grants, and contributions received. The Treasurer shall distribute funds from the flood insurance tax fund for the operations and responsibilities of the State Office of the National Flood Insurance Program, as provided in §15-5-20b of this code, for activities that promote and enhance floodplain management issues, and for subgrants to local units of government and other eligible entities after full consideration of the recommendations of the Division of Emergency

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§33-3-14a. Additional premium tax.

For the purpose of providing additional revenue for the state General Revenue Fund, there is hereby levied and imposed, in addition to the taxes imposed by §33-3-14 of this code, an additional premium tax equal to one percent of taxable premiums. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, and collection of the regular premium tax imposed by §33-3-14 of this code shall be applicable to the levy, imposition, and collection of the additional tax imposed by this section. All moneys received from the additional tax imposed by this section, less deductions allowed by this article or §33-43-1 *et seq*. of this code for refunds and for costs of administration, shall be received by the commissioner and shall be paid by him or her into the State Treasury in accordance with §33-3-14(b) of this code for the benefit of the General Revenue Fund: Provided, That moneys received pursuant to this section pertaining to federal flood insurance policy premium taxes or private market flood insurance premium taxes shall be deposited and distributed in accordance with §33-3-14(c) of this code.

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§33-3-14b. Credits against premium tax for investment in West Virginia securities.

(a) If the annual statement of any insurer covering a calendar year shows it to have investments at the close of the year in West Virginia securities, of at least twenty-five percent of its admitted assets, it is entitled to a credit against the premium tax levied by sections fourteen and fourteen-a of this article in an amount equal to one hundred percent of the tax for the calendar year: Provided, That the insurer proves to the satisfaction of the commissioner that it employs less than twenty full-time employees, has gross direct premiums of less than $10 million and derives a minimum of fifty percent of its gross direct premiums from insurance provided to under-served areas of West Virginia.

(b) As used in this section:

(1) "Full-time employees" means all elected officers, all full-time employees, all part-time employees each counted as one-half full-time employee equivalents and all full and part-time equivalent employees of affiliated companies within an insurance holding company system providing any type of service by contract or by any other arrangement;

(2) "Underserved areas" means those counties of the state for which the insurer demonstrates to the satisfaction of the commissioner that consumers in that county have an inadequate choice of insurance providers;

(3) "West Virginia securities" means real estate situate in this state; bonds or interest-bearing notes or obligations of this state; and bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political subdivision of this state; revenue bonds issued by any West Virginia state agency, board, department or commission authorized to issue such bonds by the laws of this state; and cash balances in regularly established accounts in West Virginia state banks and reflected as an asset in such annual statement; provided that the amount of such cash shall be calculated based on fifty percent of the average quarterly balance of such accounts and provided further that such cash may make up no more than forty percent of the insurer's investments in West Virginia securities.

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§33-3-14c. Computation and payment of tax.

The taxes levied hereunder shall be due and payable in quarterly installments on or before the twenty-fifth day of the month succeeding the end of the quarter in which they accrue, except for the fourth quarter, for which taxes shall be due and payable on or before March 1 of the succeeding year. The insurer subject to making the payments shall, by the due date, prepare an estimate of the tax based on the estimated amount of taxable premium during the preceding quarter, and mail the estimate together with a remittance of the amount of tax to the office of the commissioner.

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§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

(a)(1) For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and the Teachers Retirement System Reserve Fund and for volunteer and part-volunteer fire companies and departments, there is hereby levied and imposed an additional premium tax equal to one percent of taxable premiums for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance does not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(2) All moneys collected from this additional tax shall be received by the commissioner and paid by him or her into a special account in the State Treasury, designated the Municipal Pensions and Protection Fund: *Provided*, That on or after January 1, 2010, the commissioner shall pay 10 percent of the amount collected to the Teachers Retirement System Reserve Fund created in §18-7A-18 of this code, 25 percent of the amount collected to the Fire Protection Fund created in §33-3-33 of this code for allocation by the Treasurer to volunteer and part-volunteer fire companies and departments and 65 percent of the amount collected to the Municipal Pensions and Protection Fund: *Provided, however*, That upon notification by the Municipal Pensions Oversight Board pursuant to the provisions of §8-22-18b this code, on or after January 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds, 65 percent of the amount collected by the commissioner shall be deposited in the Municipal Pensions Security Fund created in §8-22-18b of this code. The net proceeds of this tax after appropriation thereof by the Legislature is distributed in accordance with the provisions of this section, except for distribution from proceeds pursuant to §8-22-18a(d) of this code.

(b)(1) Before August 1 of each year, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund is established shall report to the State Treasurer the average monthly number of members who worked at least one hundred hours per month and the average monthly number of retired members of municipal policemen's or firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System during the preceding fiscal year: *Provided*, That beginning in the year 2010 and continuing thereafter, the report shall be made to the oversight board created in §8-22-18a of this code. These reports received by the oversight board shall be provided annually to the State Treasurer by September 1.

(2) Before September 1 of each calendar year, the State Treasurer, or the Municipal Pensions Oversight Board, once in operation, shall allocate and authorize for distribution the revenues in the Municipal Pensions and Protection Fund which were collected during the preceding calendar year for the purposes set forth in this section. Before September 1 of each calendar year and after the Municipal Pensions Oversight Board has notified the Treasurer and commissioner pursuant to §8-22-18b of this code, the Municipal Pensions

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Oversight Board shall allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund which were collected during the preceding calendar year for the purposes set forth in this section. In any year the actuarial report required by §8-22-20 of this code indicates that no actuarial deficiency exists in the municipal policemen's or firemen's pension and relief fund and that no pension funding revenue bonds of the building commission of such municipality remain outstanding, no revenues may be allocated from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund to that fund. The revenues from the Municipal Pensions and Protection Fund shall then be allocated to all other pension and relief funds which have an actuarial deficiency. Pension funding revenue bonds include bonds of a municipality's building commission the net proceeds of which were used to fund either or both of a municipality's policemen's or firemen's pension and relief fund or bonds issued to refinance such bonds.

(3) The Municipal Pensions Oversight Board shall annually review the investment performance of each municipal policemen's or firemen's pension and relief fund. If the municipal pension and relief fund's board fails for three consecutive years to comply with the investment provisions established §8-22-22a of this code, the oversight board may require the municipal policemen's or firemen's pension and relief fund to invest with the Investment Management Board to continue to receive its allocation of funds from the premium tax. If the municipal pension and relief fund fails to move its investments to the Investment Management Fund within the 18-month drawdown period, provided in §8-22-19(e) of this code, the revenues shall be reallocated to all other municipal policemen's or firemen's pension and relief funds that have drawn down one hundred percent of their allocations.

(4) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection Fund allocated to volunteer and part-volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in §8-15-8A of this code.

(c)(1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average monthly number of police officers and firefighters who worked at least one hundred hours per month during the preceding fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant to the tax imposed by this section and interest thereon there shall be allocated and authorized for distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average number of police officers and firefighters who worked at least 100 hours per month and average monthly number of retired police officers and firefighters. For the purposes of this subsection, the growth in moneys collected from the tax collected pursuant to this section is determined by subtracting the amount of the tax collected during the fiscal year ending June 30, 1996, from

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the tax collected during the fiscal year for which the allocation is being made and interest thereon. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in sections 16 through 28a, inclusive, article 22, chapter eight of this code. Notwithstanding the foregoing provision of this subdivision, if a municipality has outstanding pension funding revenue bonds and continues to pay the normal cost of its policemen's and firemen's pension and relief funds, then the allocable share of revenues to be allocated which would otherwise have been allocated to a municipal policemen's or firemen's pension and relief fund shall instead be allocated to the trustee of any outstanding pension funding revenue bonds.

(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part-volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part-volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System to the total number of members of the fire department. If a municipality has outstanding pension funding revenue bonds and continues to pay the normal cost of its policemen's and firemen's pension and relief funds, then the share that would otherwise be payable to the municipality's firemen's pension and relief fund pursuant to this subsection shall be paid to the trustee of such outstanding pension funding revenue bonds.

(d) The allocation and distribution of revenues provided in this section are subject to the provisions of §8-22-20 of this code and §8-15-8a and §8-15-8b of this code.

(e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and declares that during the period of 1982 through April 27, 2012, allocations from the Municipal Pensions and Protection Fund were miscalculated and errors were made in amounts transferred, resulting in overpayments and underpayments to the relief and pension funds and to the Teachers Retirement System, and that the relief and pension funds and the Teachers Retirement System were not at fault for any of the overpayments and underpayments. The Legislature hereby further finds and declares that any attempt by the Municipal Pension Oversight Board or other entity to recover any of the overpayments would be unjust and create economic hardship for the entities that received overpayments. No entity, including, without limitation, the Municipal Pension Oversight Board, may seek to recover from a relief or pension fund, the Teachers Retirement System or the state any overpayments received from the Municipal Pensions and Protection Fund and the overpayments are not subject to recovery, offset or litigation. Pursuant to the audit by the Treasurer, the amount of $3,631,846.55 is determined owed to specific relief and pension funds through the period of April 27, 2012. The Treasurer is hereby authorized to transfer the amount of $3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal

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Pensions and Protection Fund, which is hereby reopened for the sole purpose of the transfer and remittances pursuant to this subsection, and to use the amount transferred to remit the amounts due to the pension and relief funds. The payment of $3,631,846.55 to the pension and relief funds is complete satisfaction of any amounts due and no entity, including, without limitation, the Municipal Pension Oversight Board and any pension or relief fund, may seek to recover any further amounts.

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§33-3-14e. Use of insurance premium tax proceeds to support health sciences and medical schools.

(a) The Legislature recognizes that the schools of medicine, dentistry, nursing, and related programs of the Health Sciences Center of West Virginia University School of Medicine; the Medical School at Marshall University; and the West Virginia School of Osteopathic Medicine, each provide critical, medical, and related health educational and service opportunities for the significant benefit of the residents of the State of West Virginia. The Legislature finds and declares that it should dedicate a portion of the insurance tax proceeds credited to the general fund as contemplated by §33-3-14(c) of this code and §33-3-14a of this code to provide additional dedicated funds to the base of appropriation support for these schools.

(b) Effective July 1, 2022, to support these schools, and in addition to the base appropriations to these schools, the Governor shall include appropriations in each annual budget bill submitted to the Legislature from the amounts sent to the credit of the General Revenue Fund pursuant to §33-3-14(c) of this code and §33-3-14a of this code, as follows:

(1) To the schools of medicine, dentistry, nursing, and related programs of the Health Sciences Center of West Virginia University, $14 million;

(2) To the School of Medicine at Marshall University, $5,500,000; and

(3) To the West Virginia School of Osteopathic Medicine, $3,900,000.

(c) These funds shall be dedicated quarterly from the collection of the insurance premium tax in the months of July, October, February, and April of each fiscal year. Each school as set forth in subsection (b) of this section shall receive their dedicated funds at the rate of one quarter of the full amount in each of those months.

(d) Nothing in this section shall be construed to limit or reduce the amount of total appropriations to schools of medicine, dentistry, nursing, and related programs of the Health Sciences Center of West Virginia University, the Medical School at Marshall University, and the West Virginia School of Osteopathic Medicine to the amounts contemplated by this section.

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§33-3-15. Annuity tax.

(a) For the taxable years beginning on or after January 1, 2021, the tax imposed by this section is discontinued.

(b) Every life insurer transacting insurance in West Virginia shall make a return to the commissioner annually on a form prescribed by the commissioner, on or before March 1, under the oath of its president or secretary, of the gross amount of annuity considerations collected and received by it during the previous calendar year on its annuity business transacted in this state and stating the amount of tax due under this section, together with payment in full for the tax due. The tax is the sum equal to one per centum of the gross amount of the annuity considerations, less annuity considerations returned and less termination allowances on group annuity contracts. All the taxes received by the commissioner shall be paid into the insurance tax fund created in §33-3-14(b) of this code. In the case of funds accepted by a life insurer under an agreement which provides for an accumulation of money to purchase annuities at future dates, annuity considerations may be either considered by the life insurer to be collected and received upon receipt or upon actual application to the purchase of annuities. Any earnings credited to money accumulated while under the latter alternative will also be considered annuity considerations. For purposes of this election, the alternative which the life insurer elected to file its tax return for the 2001 tax year or which it elects when it enters the state, whichever is later, shall be considered the life insurer's election between these alternatives. A life insurer filing a year 2001 tax return shall provide written notice to the commissioner of its election within 90 days of the effective date of this enactment. Otherwise, a life insurer shall provide written notice to the commissioner of its election within 90 days after it enters the state. Thereafter, a life insurer may not change its election without the consent of the Insurance Commissioner. The Insurance Commissioner may develop forms to assure compliance with this subsection.

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§33-3-16. Retaliation.

(a) When by or pursuant to the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other material obligations, prohibitions or restrictions are imposed upon West Virginia insurers doing business, or that seek to do business in such other state or country, or upon the agents of such insurers, which in the aggregate are in excess of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed in the aggregate upon similar insurers of such other state or foreign country or upon the agents of such insurers under the statutes of this state, so long as such laws continue in force or are so applied, the same obligations, prohibitions and restrictions of whatever kind shall be imposed in the same manner upon similar insurers of such other state or foreign country doing business in West Virginia. Any tax, license or other obligation imposed by any city, county or other political subdivision of a state or foreign country on West Virginia insurers or their agents shall be deemed to be imposed by such state or foreign country within the meaning of this section. The provisions of this section shall not apply to ad valorem taxes on real or personal property or to personal income taxes.

(b) If an insurer domiciled in West Virginia is refused authority to transact in another state insurance upon a plan and in a manner which is permitted for domestic insurers of such other state, notwithstanding that the West Virginia insurer be fully qualified for such authority in accordance with the applicable laws of such other state, and if such refusal be not accompanied by a written statement of the grounds therefor, then and thereafter, and for so long as such refusal shall continue, the commissioner may refuse to grant an initial license (but not a renewal of an existing license) to any insurer domiciled in such other state which may seek to transact in West Virginia a like kind or kinds of insurance.

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§33-3-17. Minimum tax payable.

(a) The minimum amount of tax payable by any insurer licensed in the State of West Virginia when considering the aggregate payments due from all of the taxes imposed by this article is $200 for any calendar year. This minimum tax is payable annually on or before March 1 and shall be calculated on a form prescribed by the commissioner. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of this minimum tax. All moneys received by the commissioner from this minimum tax shall be paid into the insurance tax fund created in subsection (b), section fourteen of this article.

(b) The amendment to this section enacted during the 1998 regular session of the Legislature is effective on July 1, 1998.

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§33-3-18.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-19.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-20.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-21.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-22.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-23.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-24.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-25.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-26.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-27.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

WV Legislature

§33-3-28.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-29.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-30.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-31.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-32.

Repealed.

Acts, 2001 Reg. Sess., Ch. 158.

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§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-volunteer fire departments; Public Employees Insurance Agency and municipal pension plans; special fund created; allocation of proceeds; effective date.

(a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and certain retired teachers and the Teachers Retirement Reserve Fund, there is hereby authorized and imposed on and after July 1, 1992, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy. After June 30, 2005, the surcharge shall be imposed as specified in subdivisions (2) and (3) of this subsection.

(2) After June 30, 2005, through December 31, 2005, for the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and to provide additional revenue to the Public Employees Insurance Agency and municipal pension plans, there is hereby authorized and imposed on and after July 1, 2005, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy.

(3) After December 31, 2005, for the purpose of providing additional revenue for volunteer fire departments and part-volunteer fire departments, there is hereby authorized and imposed on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to fifty-five one hundredths of one percent of the taxable premium for each such policy.

(4) For purposes of this section, casualty insurance may not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. The policy surcharge may not be subject to premium taxes, agent commissions, or any other assessment against premiums.

(b) The policy surcharge shall be collected and remitted to the commissioner by the insurer, or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is issued by a risk retention group, by the risk retention group. The amount required to be collected under this section shall be remitted to the commissioner on a quarterly basis on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year.

(c) Any person failing or refusing to collect and remit to the commissioner any policy surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing is liable for a civil penalty of up to $100 for each day of delinquency, to be assessed by

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the commissioner. The commissioner may suspend the insurer, broker, or risk retention group until all surcharge payments and penalties are remitted in full to the commissioner.

(d)(1) All money from the policy surcharge shall be collected by the Commissioner who shall disburse the money received from the surcharge into a special account in the State Treasury, designated the Fire Protection Fund. The net proceeds of this portion of the tax and the interest thereon, after appropriation by the Legislature, shall be distributed quarterly on the first day of the months of January, April, July, and October to each volunteer fire company or department on an equal share basis by the State Treasurer. After June 30, 2005, the money received from the surcharge shall be distributed as specified in subdivisions (2) and (3) of this subsection.

(2)(A) After June 30, 2005, through December 31, 2005, all money from the policy surcharge shall be collected by the commissioner who shall disburse one half of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(B) The remaining portion of moneys collected shall be transferred into the fund in the State Treasury of the Public Employees Insurance Agency into which are deposited the proportionate shares made by agencies of this state of the Public Employees Insurance Agency costs of those agencies, until November 1, 2005. After October 31, 2005, through December 31, 2005, the remain portion shall be transferred to the special account in the state Treasury, known as the Municipal Pensions and Protection Fund.

(3) After December 31, 2005, all money from the policy surcharge shall be collected by the commissioner who shall disburse all of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(4) Before each distribution date to volunteer fire companies or departments, the State Fire Marshal shall report to the state Treasurer:

(A) The names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in §8-15-8a of this code during the preceding quarter;

(B) The number of volunteer firefighters and the number of full-time paid members providing services to each volunteer and part-volunteer fire company and department during the preceding quarter;

(C) A full accounting of each volunteer and part-volunteer fire company and department eligible to receive a distribution under this section’s revenues and expenditures for the last two calendar years; and

(D) A list of each volunteer and part-volunteer fire company and department has implemented the State Auditor’s West Virginia Checkbook fiscal reporting system on or

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before January 1, 2026.

(e) Notwithstanding any other provision of this subsection, each volunteer and part-volunteer fire company and department shall implement the State Auditor's West Virginia Checkbook fiscal reporting system on or before January 1, 2026, in order to remain eligible to receive any funds pursuant to this section.

(f) The allocation, distribution, and use of revenues provided in the Fire Protection Fund are subject to the provisions of §8-15-8a and §8-15-8b of this code.

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§33-3-33a. Excess moneys of Fire Protection Fund deposited into Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; other funding; special report from State Fire Marshal by December 15, 2015; termination of program June 30, 2022.

(a) There is hereby established a special fund in the State Treasury known as the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund. The fund shall be administered by the State Auditor and shall consist of moneys deposited in the fund pursuant to this section, any other funds appropriated by the Legislature for volunteer fire departments for the purposes of §12-4-14a of this code, and the interest or other earnings on the moneys in the fund. The State Auditor shall administer the distribution of moneys of the fund to volunteer fire departments to help defray workers' compensation insurance premium increases pursuant to said section. Balances in the fund at the end of any fiscal year may not expire but shall be expended for those purposes in ensuing fiscal years pursuant to appropriation of the Legislature.

(b) Beginning July 1, 2013, and in each fiscal year thereafter until June 30, 2022, the excess of the aggregate of amounts collected by the commissioner that are otherwise required under any provision of this code to be deposited into the Fire Protection Fund over the aggregate of those amounts deposited into the Fire Protection Fund during the fiscal year ending June 30, 2013, shall be deposited into the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund and expended solely for the purposes established in §12-4-14a of this code.

(c) On or before August 1, 2013, the commissioner shall transfer $4 million from the Fire Marshal Fees Fund created under §29-3-12b of this code to the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund to be expended solely for the purposes established in §12-4-14a of this code until June 30, 2022.

(d) The State Fire Marshal, in consultation with the Insurance Commissioner, the State Auditor, the Secretary of Revenue and the Legislative Auditor, shall conduct a review of the needs of each volunteer or part volunteer fire company or volunteer fire department serving in the various counties of the state. On or before December 31, 2015, the State Fire Marshal shall submit to the Joint Committee on Government and Finance a comprehensive report of the review and the State Fire Marshal's recommendations, substantiated by the findings of the review, of steps that may be taken to meet the needs of and sustain the volunteer and part volunteer fire companies and volunteer fire departments of this state, including, but not limited to, the following:

(1) An assessment of all current funding received by the volunteer fire companies and departments, and a further assessment of the funding necessary to provide the community protections required for the areas served by the volunteer fire companies and departments, the extent to which those needs are being met, the extent to which they are not being met, and recommendations of sources of funds to meet additional needs and the amounts needed, if any;

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(2) An assessment of the cost of workers' compensation coverage for the volunteer fire companies and departments and recommendations for any actions that may be undertaken by the volunteer fire companies and departments and others to reduce those costs;

(3) An assessment of the causes of any decline in recruitment and retention of volunteer firefighters and recommendations for improvements in this area, including any recommendations for incentives that have a demonstrated record of significant increases in recruitment and retention as well as recommendations of sources of funds to provide those incentives, if funds are necessary;

(4) An assessment of the level of financial accountability that should be required of volunteer fire companies and departments in order to provide the Legislature the information necessary to target future funding for their activities based upon the safety and fire protection needs of the various areas of the state;

(5) An assessment of the comparative levels of funding for volunteer fire companies and departments provided by counties, municipalities and other political subdivisions and the means by which that funding is provided, including identification of those which contribute little or no funding to the volunteer fire companies and departments within their jurisdictions, together with recommendations for increasing those levels of contributions;

(6) An assessment of the comparative levels of funding for volunteer fire companies and departments provided by their own efforts, and the means by which that funding is provided, including identification of those which provide little or no funding through their own efforts, together with recommendations for increasing these sources of funding;

(7) An assessment of the comparative economic and other benefits provided by the various volunteer fire companies and departments to their particular counties, municipalities and other political subdivisions, as well as to citizens of the local communities they serve;

(8) An assessment of the sustainability of the current model of providing fire and other protections to the citizens of rural communities through volunteer fire companies and departments and an assessment of alternative models for providing those protections; and

(9) Other assessments and recommendations which the State Fire Marshal deems appropriate in the circumstances.

(e) Upon the conclusion of the fiscal year ending June 30, 2022, the provisions of this section and §12-4-14a of this code shall expire and be of no further force and effect and the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund shall be closed. Upon closure of the fund, from any balances therein remaining, the State Auditor shall first, to the extent available, transfer to the Fire Protection Fund an amount equal to the aggregate of funds deposited into the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund during the fiscal years ending June 30, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022 pursuant to subsection (b) of this section that would

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otherwise have been required to be deposited into the Fire Protection Fund, and any balances thereafter remaining in the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund shall expire to the General Revenue Fund of the state. Notwithstanding any provision of this code to the contrary, on June 30, 2020, the State Auditor shall transfer one million eight hundred thousand dollars from the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund to the Fire Service Equipment and Training Fund created pursuant to §29-3-5f of this code.

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§33-3-33b. Report regarding volunteer firefighter workers' compensation coverage.

(a) The Insurance Commissioner, in consultation with the State Fire Marshal, the State Auditor, the Legislative Auditor, and the Board of Risk and Insurance Management, shall study the feasibility of combining the volunteer fire departments in our state under a single policy for workers' compensation coverage, self-insuring workers' compensation coverage for volunteer fire departments, or other workers' compensation coverage options. Such study shall also include an evaluation of the benefit, necessity, and feasibility of expanding the current scope of workers' compensation coverage for volunteers, including, but not limited to, presumptions for cardiovascular or pulmonary disease, occupational pneumoconiosis, or other occupational disease, as well as a comparison of those proposals to other means of supplementing workers' compensation insurance through secondary insurance policies.

(b) On or before July 1, 2019, the Insurance Commissioner shall submit to the Joint Committee on Government and Finance and the Joint Committee on Government Organization a comprehensive report of the review and the Insurance Commissioner's recommendations, substantiated by the findings of the review, and steps that may be taken to meet the needs of and sustain the volunteer fire departments for their workers' compensation coverage.

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