WEST VIRGINIA CODE CHAPTER 33 ARTICLE 34

WV Legislature

§33-34-1. Definitions.

For the purposes of this article the following definitions shall apply:

(a) "Insurer" means and includes every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuities as limited to:

Any insurer who is doing an insurer business, or has transacted insurance in this state, and against whom claims arising from that transaction may exist now or in the future;

This shall include, but not be limited to, any domestic insurer as defined in section six, article one of chapter thirty-three and any foreign insurer as defined in section seven, article one of said chapter thirty-three including any stock insurer, mutual insurer, reciprocal insurer, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, dental service corporation, health service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group.

(b) "Exceeded its powers" means the following conditions:

(1) The insurer has refused to permit examination of its books, papers, accounts, records or affairs by the commissioner, his deputy, employees, or duly commissioned examiners;

(2) A domestic insurer has unlawfully removed from this state books, papers, accounts or records necessary for an examination of the insurer;

(3) The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;

(4) The insurer has neglected or refused to observe an order of the commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock or surplus;

(5) The insurer is continuing to transact business or write insurance after its license has been revoked or suspended by the commissioner;

(6) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or has without first having obtained written approval of the commissioner if approval is required by law;

(A) Totally reinsured its entire outstanding business; or

(B) Merged or consolidated substantially its entire property or business with another insurer.

(7) The insurer engaged in any transaction in which it is not authorized to engage under the

WV Legislature

laws of this state; or

(8) The insurer refused to comply with a lawful order of the commissioner.

(c) "Consent" means agreement to administrative supervision by the insurer.

WV Legislature

§33-34-2. Applicability.

The provisions of this article shall only apply to:

(a) All domestic insurers; and

(b) Any other insurer doing business in this state whose state of domicile has asked the commissioner to apply the provisions of this article as regards such insurer.

WV Legislature

§33-34-3. Administrative supervision; order; review.

(a) An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner's discretion that:

(1) The insurer's condition renders the continuance of its business hazardous to the public, to its insureds or to its creditors;

(2) The insurer has or appears to have exceeded its powers granted under its certificate of authority and applicable law;

(3) The insurer has failed to comply with the applicable provisions of this chapter or chapter twenty-three of this code;

(4) The business of the insurer is being conducted fraudulently; or

(5) The insurer gives its consent.

(b) If the commissioner determines that one or more of the conditions set forth in subsection (a) of this section exist, the commissioner shall enter an order placing the insurer under administrative supervision of the commissioner. The order shall:

(1) Notify the insurer of the commissioner's determination and set forth the conduct, conditions and grounds upon which the commissioner based the determination;

(2) Set forth all requirements necessary to abate the determination; and

(3) Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of the article.

(c) (1) If placed under administrative supervision, the insurer shall have sixty days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner subject to the provisions of this article.

(2) If it is determined after notice and hearing that conditions giving rise to the supervision still exist at the end of the supervision period specified above, the commissioner may enter an order to extend such period.

(3) If it is determined by the commissioner that conditions giving rise to the supervision have been corrected, the commissioner shall enter an order to release the insurer from supervision.

(d) (1) An insurer subject to an order placing the insurer under administrative supervision may contest and seek review of the order, or any extensions or modifications thereof, pursuant to the provisions of section thirteen, article two of this chapter. Every notice of hearing shall state the time and place of the hearing and the conduct, condition or ground

WV Legislature

upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten days nor more than thirty days after notice is served.

(2) A hearing upon an order of the commissioner in which the commissioner is alleging, pursuant to subdivision (1), subsection (a) of this section that the insurer's condition renders the continuance of its business hazardous to the public, its insureds or its creditors shall be held privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(3) During the period of supervision, the insurer may contest an action taken or proposed to be taken by the supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer.

WV Legislature

§33-34-3a. Standards to determine hazardous condition; commissioner's authority.

(a) Standards. -- In making a determination pursuant to subdivision (1), subsection (a), section three of this chapter as to whether the continued operation of an insurer transacting an insurance business in this state might be deemed to be hazardous to the public, to its insureds or to its creditors, the commissioner may consider the following standards either singly or in combination:

(1) Adverse findings reported in financial condition and market conduct examination reports, audit reports and actuarial opinions, reports or summaries;

(2) The National Association of Insurance Commissioners' insurance regulatory information system and its other financial analysis solvency tools and reports;

(3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets and the considerations anticipated to be received and retained under such policies and contracts;

(4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(5) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets and cash dividends paid to shareholders, is greater than fifty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required;

(6) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) Whether a reinsurer, obligor or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations and which in the opinion of the commissioner may affect the solvency of the insurer;

(8) Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

WV Legislature

(10) The age and collectability of receivables;

(11) Whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;

(14) Whether management of an insurer has filed any false or misleading sworn financial statement, released a false or misleading financial statement to lending institutions or to the general public, or made a false or misleading entry or omitted an entry of material amount in the books of the insurer;

(15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(16) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

(17) Whether management has established reserves that do not comply with minimum standards established by this chapter or the rules promulgated thereunder, statutory accounting standards, sound actuarial principles and standards of practice;

(18) Whether management persistently engages in material under-reserving that results in adverse development;

(19) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; and

(20) Any other finding determined by the commissioner to be hazardous to the insurer's insureds, creditors or the general public.

(b) Commissioner's authority. -- For the purposes of making a determination of an insurer's financial condition under this section, the commissioner may:

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

WV Legislature

(2) Make appropriate adjustments, including disallowance, to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates consistent with the NAIC Accounting Policies And Procedures Manual, state laws and rules;

(3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) Increase the insurer's liability in an amount equal to any contingent liability, pledge or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

(c) Order. -- If the commissioner determines that the continued operation of the insurer may be hazardous to its insureds, creditors or the general public, then the commissioner may order the insurer to do one or more of the following: Provided, That if the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute:

(1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) Reduce, suspend or limit the volume of business being accepted or renewed;

(3) Reduce general insurance and commission expenses by specified methods;

(4) Increase the insurer's capital and surplus;

(5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(6) File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

(7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(8) Document the adequacy of premium rates in relation to the risks insured;

(9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the commissioner;

(10) Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;

(11) Provide a business plan to the commissioner in order to continue to transact business in the state; or

WV Legislature

(12) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any nonlife insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

WV Legislature

§33-34-4. Confidentiality of certain proceedings and records.

(a) Notwithstanding any other provision of law and except as set forth in this section, proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the commissioner relating to the supervision of any insurer shall not be subject to disclosure as provided in article one, chapter twenty-nine-b of this code, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action, except as provided by this section. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(b) The personnel of the offices of the Insurance Commissioner shall have access to these proceedings, hearings, notices, correspondence, reports, records or information as permitted by the commissioner. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any such documents, materials or information.

(c) The commissioner may share the notices, correspondence, reports, records or information with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States, and provided that the recipient agrees to maintain the confidentiality of the documents, material or other information. No waiver of any applicable privilege or claim of confidentiality shall occur as a result of the sharing of documents, materials or other information pursuant to this subsection.

(d) The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records or other information if the commissioner deems that it is in the best interest of the public, the insurer, its insureds, creditors or the general public.

(e) This section does not apply to hearings, notices, correspondence, reports, records or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

WV Legislature

§33-34-5. Prohibited acts during period of supervision.

An insurer may not engage in the following actions during the period of supervision, without the prior approval of the commissioner or his or her special deputy supervisor:

(1) Dispose of, convey, or encumber any of its assets or its business in force;

(2) Withdraw any of its bank accounts;

(3) Lend any of its funds;

(4) Invest any of its funds;

(5) Transfer any of its property;

(6) Incur any debt, obligation or liability;

(7) Merge or consolidate with another company;

(8) Approve new premiums or renew any policies;

(9) Enter into any new reinsurance contract or treaty;

(10) Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums due;

(11) Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;

(12) Make any material change in management; or

(13) Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends, or other payments deemed preferential.

WV Legislature

§33-34-6. Administrative election of proceedings.

Nothing contained in this article shall preclude the commissioner from initiating judicial proceedings to place an insurer in rehabilitation or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of whether the commissioner has previously initiated administrative supervision proceedings under this article against the insurer.

WV Legislature

§33-34-7. Rules.

The division is empowered to adopt reasonable rules pursuant to chapter twenty-nine-a of this code deemed necessary for the implementation of this article.

WV Legislature

§33-34-8. Meetings between the commissioner and the special deputy supervisor.

Notwithstanding any other provision of this code to the contrary, the commissioner may meet with a special deputy supervisor appointed under this article and with the attorney or other representative of the special deputy supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this article to carry out the commissioner's responsibilities as provided in this article or for the special deputy supervisor to carry out his or her duties as provided in this article.

WV Legislature

§33-34-9. Special deputy supervisor appointed and expenses.

(1) During the period of supervision the division by contract or otherwise may appoint a special deputy supervisor to supervise the insurer. In the event that a special deputy supervisor is not appointed, the commissioner shall serve in such capacity.

(2) Each insurer which is subject to administrative supervision by the department shall pay to the division the expenses of its administrative supervision at the rates established by the division. Expenses shall include actual travel expenses, a reasonable living expense allowance, compensation of the special deputy supervisor or other persons employed or appointed by the division for purposes of the supervision, and necessary attendant administrative cost of the division directly related to the supervision. The travel expense and living expense allowance shall be limited to those expenses necessarily incurred in the performance of official duties relating to the administrative supervision and shall be paid by the insurer together with compensation upon presentation by the division to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the special deputy supervisor or other person employed or appointed by the division and approved by the division.

(3) All moneys collected from insurers for the expenses of administrative supervision shall be deposited into an account created in the State Treasury designated the "Insurance Commissioner's Regulatory Trust Fund", and the division is authorized to make deposits when required into this fund from moneys collected in the commissioner's "Operating-Additional Fees" account.

(4) The division is authorized to pay to the special deputy supervisor or person employed or appointed by the division for purposes of the supervision out of such trust fund,as created in subsection three of this section, the actual travel expenses, reasonable living expense allowance, and compensation in accordance with the statement filed with the division by the special deputy supervisor or other person, as provided in subsection (2), upon approval by the division.

(5) The division may in whole or in part defer payment of expenses due from the insurer pursuant to this section upon a showing that payment would adversely impact the financial condition of the insurer and jeopardize its rehabilitation. The payment shall be made by the insurer when the condition is removed and the payment would no longer jeopardize the insurer's financial condition.

WV Legislature

§33-34-10. Immunity.

There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Insurance Commissioner or the division or its employees or agents thereof for any action taken by them in the performance of their powers and duties under this article.

WV Legislature

§33-34-11.

Repealed.

Acts, 2010 Reg. Sess., Ch. 108.

WV Legislature