

WEST VIRGINIA CODE: §33-4-15B

§33-4-15b. Reinsurance agreements; reduction of liability; requirements.

(a) This section applies to all domestic life insurers, domestic accident and sickness insurers, and domestic property and casualty insurers with respect to their accident and sickness business. This section also applies to all other licensed life insurers, accident and sickness insurers, and property and casualty insurers with respect to their accident and sickness business who are not subject to a substantially similar law or regulation in their domiciliary state. This section does not apply to assumption reinsurance, yearly renewable term reinsurance, or certain nonproportional reinsurance such as stop loss or catastrophic reinsurance.

(b) An insurer subject to this section shall not, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commissioner if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(1) The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for significant participation by the reinsurer in one or more of the following risks: Mortality, morbidity, investment or surrender benefit;

(2) The reserve credit taken by the ceding insurer is not in compliance with this chapter, including actuarial interpretations or standards adopted by the commissioner;

(3) The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding company supporting the policy obligation transferred under the reinsurance agreement;

(4) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement: Provided, That neither offsetting experience refunds against current and prior years' losses nor payment by the ceding insurer of an amount equal to current and prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience;

(5) The ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer: Provided, That termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus;

(6) The ceding insurer shall, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded;

(7) No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account," and no funds in such account are available for the payment of benefits;

(8) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies; or

(9) Any other conditions specified by rules promulgated by the commissioner pursuant to chapter twenty-nine-a of this code.

(c) Notwithstanding the provisions of subsection (b) of this section, an insurer subject to this article may, with the prior approval of the commissioner, take such reserve credit as the commissioner may deem consistent with this chapter, including actuarial interpretations or standards adopted by the commissioner.

(d) A reinsurance agreement or amendment to any agreement shall not be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner, unless the agreement, amendment or a letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

(e) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement shall be executed within a reasonable period of time, not exceeding ninety days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(f) Life insurers subject to this section may continue to reduce liabilities or establish assets in financial statements filed with the commissioner for reinsurance ceded under types of reinsurance agreements described in subsection (b) of this section: Provided, That:

(1) The agreements were executed and in force prior to the effective date of this section;

(2) No new business is ceded under the agreements after the effective date of this section;

(3) The reduction of the liability or the asset established for the reinsurance ceded is reduced to zero by December 31, 1994, or such later date approved by the commissioner as a result of an application made by the ceding insurer prior to December 31, 1992;

(4) The reduction of the liability or the establishment of the asset is otherwise permissible under all other applicable provisions of this chapter, including actuarial interpretations or standards adopted by the commissioner; and

(5) The commissioner is notified, within ninety days after the effective date of this section, of the existence of such reinsurance agreements and all corresponding credits taken in the ceding insurer's annual statement for the year 1991.

(g) Accident and sickness insurers and property and casualty insurers subject to this section shall be in compliance with the requirements of this section, with respect to their accident and sickness business, pursuant to such terms and conditions as are contained in the legislative rule to be promulgated by the commissioner.

(h) The commissioner shall promulgate a rule pursuant to chapter twenty-nine-a of this code for the implementation and administration of this section on or before July 1, 1996.