WEST VIRGINIA CODE CHAPTER 33 ARTICLE 5

WV Legislature

§33-5-1. Scope of article.

This article shall govern domestic mutual and stock insurers hereafter formed and shall govern existing domestic mutual and stock insurers to the extent applicable.

WV Legislature

§33-5-2. Application of general laws.

The statutes of this state relating to corporations generally, except where inconsistent with the provisions of this chapter, shall apply to domestic stock and mutual insurers.

WV Legislature

§33-5-3. Articles of incorporation.

In addition to the matters and things required generally in articles of incorporation, those of a domestic stock or mutual insurer shall state:

(a) The name of the corporation;

(b) The duration of its existence, which may be perpetual;

(c) The kinds of insurance the corporation is formed to transact according to the definitions thereof in this chapter;

(d) If a stock insurer, its authorized capital, the classes and number of shares into which divided, the par value of each such share, and the respective rights of each such class. Shares without par value shall not be authorized;

(e) If a mutual insurer, the maximum contingent liability of its members (other than as to nonassessable policies) for payment of losses and expenses incurred, which liability shall be as stated in the articles of incorporation but not less than one nor more than six times the premium for the member's policy at the annual premium rate for a term of one year;

(f) The number of directors, not less than five nor more than twenty, who shall conduct the affairs of the corporation;

(g) The city or town in West Virginia in which is to be located the principal place of business, and states and countries in which business may be transacted;

(h) The limitations, if any, on the corporation's indebtedness;

(i) If a stock insurer, the extent, if any, to which its stock shall be assessable;

(j) Such other provisions, not inconsistent with law, as are deemed appropriate.

WV Legislature

§33-5-4. Certificate of incorporation.

The articles of incorporation shall be filed with the Secretary of State of this state in the same manner as for other corporations and he shall issue a certificate of incorporation subject to the provisions of section three of article three of this chapter.

WV Legislature

§33-5-5. Amendment of articles of incorporation.

(a) A stock insurer may amend its articles of incorporation in the same manner as other corporations, but no such amendment shall reduce authorized capital below the amount required by this chapter for the kinds of insurance thereafter to be transacted and except that no such amendment shall be filed with or accepted by the Secretary of State unless approved in writing by the commissioner.

(b) A mutual insurer may amend its articles of incorporation by the affirmative vote of two thirds of its members present in person or by proxy at a regular or special meeting of members of which notice in writing setting forth the proposed amendment was mailed to all members at least thirty days in advance, except that no such amendment shall reduce the surplus below the amount required by this chapter for the kinds of insurance thereafter to be transacted and except that no such amendment shall be filed with or accepted by the Secretary of State unless approved in writing by the commissioner.

WV Legislature

§33-5-6. Formation of mutuals -- Applications for insurance.

(a) Upon issuance of its certificate of incorporation as provided in section four of this article, the directors and officers of a domestic mutual corporation formed for the purpose of becoming a mutual insurer may open books for the registration of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.

(b) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located, or to be performed in West Virginia.

(c) All such applications shall provide that:

(1) Issuance of the policy is contingent upon completion of organization of the insurer and issuance to it of a proper license;

(2) No insurance is provided until the license has been so issued; and

(3) The prepaid premium or deposit, and membership or policy fee if any, shall be refunded in full to the applicant if the organization is not completed and license issued before a specified reasonable date, which date shall be not later than one year following date of issuance of the certificate of incorporation.

(d) All qualifying premiums collected shall be in cash.

(e) Solicitation for such qualifying applications for insurance shall be by licensed agents of the insurer, and the commissioner shall upon application therefor issue temporary agent's licenses expiring on the date specified pursuant to paragraph (3), above, to individuals appointed by the insurer and qualified as for a resident agent's license. The commissioner may suspend or revoke any such license for any of the same causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under article twelve.

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§33-5-7. Formation of mutuals -- Deposit of premiums; filing of trust agreement; issuance and effective date of policies.

(a) All sums collected by a domestic mutual insurer as premiums and fees on qualifying applications for insurance therein shall be deposited in trust in a West Virginia bank or trust company under a written trust agreement consistent with this section and with paragraph (3) of subsection (c) of section six of this article. The corporation shall file an executed copy of such trust agreement with the commissioner.

(b) Upon issuance to the insurer of a license as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall forthwith issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the license.

WV Legislature

§33-5-8. Formation of mutuals -- Assets required; temporary capital stock.

No such domestic mutual insurer shall be issued a license until bona fide applications have been received and cash premiums collected in the manner provided in sections six and seven of this article in such sum, which, together with any other funds that may be legally available, will result in the insurer having unencumbered assets over and above all required reserves and other liabilities of at least an amount equal to that required under section five of article three of this chapter for issuance of a license for the kinds of insurance proposed to be transacted. Such other funds may be provided by the issuance of temporary capital stock in an amount which together with such premiums collected will provide the amount necessary under section five of article three of this chapter, the proceeds of said stock to be invested in the manner provided for the investment of other funds of the insurer. In the event such temporary capital stock shall be issued, the amount of premiums required to be collected prior to licensing shall be not less than $10,000. Out of the net surplus of the insurer the holders of such temporary capital stock may receive a dividend of not more than ten per cent per annum, which may be cumulative. The stock shall not be a liability of the insurer, except that it shall be retired as soon as the surplus of the insurer becomes sufficient to pay it at its par value and leave a surplus not less than the amount of the temporary capital so retired.

WV Legislature

§33-5-9. Mutual bylaws.

(a) The initial board of directors of a domestic mutual insurer shall adopt original bylaws for the government of the corporation and conduct of its business. Such bylaws shall be subject to the approval of a majority of the insurer's members who are present in person or by proxy at the next succeeding annual meeting of members, and no bylaw provision shall thereafter be effective which is not so approved. Bylaws shall be revoked or modified only by vote of a majority of the insurer's members who are present in person or by proxy at a meeting of which notice was given as provided in the bylaws.

(b) The bylaws shall provide that each member of the insurer is entitled to one vote in the election of corporate directors and on all matters coming before membership meetings, and that such vote may be exercised in person or by proxy.

(c) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of such bylaws and of every modification thereof or of addition thereto. The commissioner shall disapprove any bylaw provision deemed by him to be unlawful, inadequate, unfair, or detrimental to the proper interests and protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

WV Legislature

§33-5-10. Mutual quorum.

A domestic mutual insurer may in its bylaws adopt a reasonable provision for determining a quorum of members at any meeting thereof. This section shall not affect any other provision of law requiring vote of a larger percentage of members for a specified purpose.

WV Legislature

§33-5-11. Mutual membership.

Each holder of one or more insurance policies or contracts issued by a domestic mutual insurer, other than a contract of reinsurance, is a member of the insurer with all the rights and obligations of such membership and each such policy or contract so issued shall so specify. Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee or fiduciary may be a member of a domestic, foreign, or alien mutual insurer.

WV Legislature

§33-5-12. Corporate rights of mutual members.

With respect to the management, records, and affairs of the insurer, a member of a domestic mutual insurer shall have the same character of rights and relationship as a stockholder has toward a domestic stock insurer.

WV Legislature

§33-5-13. Contingent liability of mutual members.

(a) Each member of a domestic mutual insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be in such maximum amount as is stated in the insurer's articles of incorporation.

(b) Each policy issued by the insurer shall contain a statement of the contingent liability, if any, of its members.

(c) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion, if any, of the obligations of the insurer which accrued while the policy was in force.

(d) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

WV Legislature

§33-5-14. Enforcement of contingent liability.

(a) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required of it by this chapter for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who at any time within the twelve months immediately preceding the date notice of such assessment was mailed to them held policies providing for contingent liability, and such members shall be liable to the insurer for the amount so assessed.

(b) The assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed five per cent of the insurer's liabilities as of the date as of which the amount of such deficiency was determined.

(c) No one policy or member as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by the insurer in any one calendar year, in excess of the number of times the premium as stated in the policy as computed solely upon premium earned on such policy during that year.

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

(e) As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of such member.

WV Legislature

§33-5-15. Mutual nonassessable policies.

While a domestic mutual insurer maintains the deposits and surplus funds necessary for the kinds of insurance it is transacting, and is otherwise in compliance with this chapter and in a sound condition, it may extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued upon receiving written approval by the commissioner. The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that such authority be revoked.

WV Legislature

§33-5-16. Participating policies.

(a) If so provided in its articles of incorporation, a domestic stock or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings, or unabsorbed portions of premiums, may classify policies issued on a participating or nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable, and shall not unfairly discriminate as between policyholders within the same such classification. A life insurer may issue both participating and nonparticipating policies only if the right or absence of right to participate is reasonably related to the premium charged.

(b) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy.

WV Legislature

§33-5-17. Dividends to stockholders.

(a) A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available surplus funds which is derived from realized net profits on its business.

(b) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus loaned to the insurer pursuant to section twenty of this article.

(c) A dividend otherwise proper, may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

WV Legislature

§33-5-18. Dividends to mutual members.

(a) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized earnings from its business.

(b) A dividend otherwise proper may be payable out of such savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

WV Legislature

§33-5-19. Illegal dividends; liability; penalty.

(a) Any director of a domestic stock or mutual insurer who votes for or concurs in declaration or payment of an illegal dividend to stockholders or members shall upon conviction thereof be guilty of a misdemeanor and, shall be jointly and severally liable, together with other such directors, for any loss thereby sustained by the insurer.

(b) The stockholders or members receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

(c) The commissioner may revoke or suspend the license of an insurer which has declared or paid an illegal dividend.

WV Legislature

§33-5-20. Borrowing by insurers.

(a) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose required by its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest at the rate agreed upon by such insurer and its lender. Such interest shall not constitute a liability of the insurer as to its funds other than such excess of surplus unless so stipulated in the agreement.

(b) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(c) Such insurer in advance of any such loan shall file with the commissioner a statement of the purposes of the loan and a copy of the proposed loan agreement, which shall be subject to the commissioner's approval. The loan and agreement shall be deemed approved thirty days after date of filing with the commissioner, unless within such thirty-day period the insurer is notified in writing of the commissioner's disapproval and the reasons therefor. The commissioner shall so disapprove any such proposed loan or agreement if he finds that the loan is reasonably unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or is not fair to policyholders, or that the information so filed by the insurer is inadequate.

(d) Any such loan to a mutual insurer or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made by a mutual insurer unless in advance approved by the commissioner.

(e) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions, nor to loans secured by pledge of assets.

WV Legislature

§33-5-21. Management and exclusive agency contracts.

(a) No domestic stock or mutual insurer shall make any contract whereby any person or persons is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors, or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, unless such contract is filed with the commissioner for his approval. The contract shall be deemed approved thirty days after filing unless disapproved by the commissioner within such thirty-day period, subject to such reasonable extension of time as the commissioner may require by notice given within such thirty days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(b) The commissioner shall disapprove any such contract if he finds that it:

(1) Subjects the insurer to excessive charges; or

(2) Is to extend for an unreasonable length of time; or

(3) Does not contain fair and adequate standards of performance; or

(4) Contains other inequitable provisions or provisions which impair the proper interests of stockholders, policyholders or members of the insurer.

WV Legislature

§33-5-22. Impairment of capital or assets.

(a) If the capital stock of a domestic stock insurer becomes impaired, or the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required of it by this chapter for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of the deficiency and serve notice upon the insurer to make good the deficiency within ninety days after service of such notice.

(b) The deficiency may be made good in cash or in assets eligible under this chapter for the investment of the insurer's funds; or if a stock insurer by reduction of the insurer's capital to an amount not below the minimum required for the kinds of insurance thereafter to be transacted; or if a mutual insurer, by amendment of its license to cover only such kind or kinds of insurance for which the insurer has on deposit sufficient surplus.

(c) If the deficiency is not made good and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it as authorized by this chapter. If such deficiency exists because of increased loss reserves required by the commissioner, or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may in his discretion and upon application and good cause shown, extend for not more than an additional one hundred eighty days the period within which such deficiency may be so made good and such proof thereof so filed.

(d) The ninety-day notice required in subsection (a) of this section shall only affect the grounds for rehabilitation of domestic insurers and grounds for liquidation as set forth in subdivision (c), section five, article ten of this chapter, and shall not affect the rights and duties of the commissioner to take action under any other grounds for rehabilitation of domestic insurers or grounds for liquidation as set forth in article ten of this chapter.

WV Legislature

§33-5-23. Mutualization of stock insurer.

(a) A domestic stock insurer may become a domestic mutual insurer pursuant to such plan and procedure as may be approved in advance by the commissioner.

(b) The commissioner shall not approve any such plan, procedure, or mutualization unless:

(1) It is equitable to both stockholders and policyholders;

(2) It is subject to approval by a vote of the holders of not less than three fourths of the insurer's capital stock having voting rights and by a vote of not less than two thirds of the insurer's policyholders who vote on such plan in person, by proxy or by mail, pursuant to such notice and procedure as may be approved by the commissioner;

(3) If a life insurer, the right to vote thereon is limited to those policyholders whose policies have face amounts of not less than $1,000 and have been in force for one year or more;

(4) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(5) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(6) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to continue successfully in business in the states in which it is then authorized to transact insurance, and for the kinds of insurance included in its license.

(c) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under article ten of this chapter.

WV Legislature

§33-5-24. Converting mutual insurer.

(a) A domestic mutual insurer may become a domestic stock insurer pursuant to such plan and procedure as is approved in advance by the commissioner.

(b) The commissioner shall not approve any such plan or procedure unless:

(1) Equitable to the insurer's members;

(2) Subject to approval by vote of not less than three fourths of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such notice and procedure as may be approved by the commissioner; if a life insurer, the right to vote may be limited to members whose policies have face amounts of not less than $1,000 and have been in force one year or more;

(3) The equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner, which such equity shall be based upon not less than the insurer's entire surplus (after deducting contributed or borrowed surplus funds) plus a reasonable present equity in its reserves and in all nonadmitted assets;

(4) The policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been a policyholder of the insurer within three years prior to the date such plan was submitted to the commissioner;

(5) The plan gives to each policyholder of the insurer as specified in paragraph (4), above, a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under paragraph (3), above;

(6) Shares are so offered to policyholders at a price not greater than to be thereafter offered to others nor at more than double the par value of such shares;

(7) The plan provides for payment to each policyholder not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled, of cash in the amount of not less than fifty percent of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of such mutual insurer; and

(8) The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one half of such required capital.

WV Legislature

§33-5-25. Mergers and consolidations of stock insurers.

(a) A domestic stock insurer of any kind may merge or consolidate with another domestic or foreign stock insurer by complying with the provisions of general law governing the merger or consolidation of stock corporations formed for profit, but subject to subsection (b), below.

(b) No such merger or consolidation shall be effectuated unless in advance thereof the plan, agreement and other supporting documents have been filed with and approved in writing by the commissioner. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(1) Is contrary to law; or

(2) Inequitable to the stockholders of any domestic insurer involved; or

(3) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in West Virginia or elsewhere.

(c) If the commissioner does not approve any such plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

WV Legislature

§33-5-26. Reinsurance.

(a) A domestic stock or mutual insurer may accept reinsurance for the same kinds of insurance and within the same limits as it is authorized to transact direct insurance, unless such reinsurance is prohibited by its articles of incorporation.

(b) A domestic stock or mutual insurer may reinsure all or substantially all its business in force, or substantially all of a major class thereof, with another insurer by an agreement of bulk reinsurance; but such agreements shall not become effective unless filed in advance with and approved in writing by the commissioner.

(c) The commissioner shall approve such agreement within a reasonable time after such filing unless he or she finds that it is inequitable to the domestic insurer, its stockholders or members, or would substantially reduce the protection or service to its policyholders or members. If the commissioner does not approve the agreement, he or she shall so notify the insurer in writing specifying his or her reasons therefor.

(d) For the purposes of this section, "bulk reinsurance" means any quota share, surplus aid or portfolio reinsurance agreement which, of itself or in combination with other similar agreements, assumes fifty-one percent or more of the liability of the reinsured company.

(e) Any contract of reinsurance whereby a domestic stock or mutual insurer cedes more than seventy-five percent of the total of its outstanding insurance liabilities shall be subject to the approval, in writing, by the commissioner.

(f) A filing shall not be made pursuant to this section unless the reinsurance agreement be certified under oath by responsible officers of the reinsurer and the reinsured to contain the entire agreement between the parties to the reinsurance agreement.

(g) Credit for reinsurance shall be subject to the provisions of section fifteen, article four of this chapter.

WV Legislature

§33-5-27. Redomestication of stock and mutual insurers.

(a) A domestic insurer may, upon the approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance and, upon such transfer, shall cease to be a domestic insurer and shall be admitted to this state if qualified as a foreign insurer. The commissioner shall approve the proposed transfer unless he or she determines the transfer is not in the best interest of the policyholders of this state.

(b) The certificate of authority, agents' appointments and licenses, rates and other items which the commissioner allows, in his or her discretion, that are in existence at the time an insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation or any other lawful method shall continue in full force and effect upon transfer if the insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of a transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner.

(c) A transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner. However, every transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

WV Legislature

§33-5-28. Mergers and consolidations of mutual insurers.

(a) A domestic mutual insurer shall not merge or consolidate with a stock insurer.

(b) A domestic mutual insurer may merge or consolidate with another mutual insurer in accordance with procedures prescribed by general laws applying to corporations formed for profit, except as hereinbelow provided.

(c) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two thirds of the members of each mutual insurer involved voting thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the commissioner. If a life insurer, right to vote may be limited to members whose policies are in face amount of not less than $1,000 and have been in force one year or more.

(d) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with and approved in writing by the commissioner. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(1) Inequitable to the policyholders of any domestic insurer involved; or

(2) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in West Virginia or elsewhere.

If the commissioner does not approve such plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

WV Legislature

§33-5-29. Mutual member's share of assets on liquidation.

(a) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration, shall be distributed to existing persons who were its members at any time within thirty- six months next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's license, whichever date is the earliest.

(b) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership, bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and a life insurer shall, make a reasonable classification of its policies so held by such members and a formula based upon such classification for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner.

WV Legislature

§33-5-30. Insider trading.

(a) Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner on or before January 31, 1966, or within ten days after he becomes such beneficial owner, director or officer a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. An action to recover such profit may be instituted in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such action within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such action shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such, both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

(c) It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and

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incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) The provisions of subsections (a), (b) and (c) of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of this section.

(f) The term "equity security" when used in this section means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase with a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(g) The provisions of subsections (a), (b) and (c) of this section shall not apply to equity securities of a domestic stock insurance company if (i) such securities shall be registered, or shall be required to be registered, pursuant to section twelve of the Securities Exchange Act of 1934, as amended, or if (ii) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of subsections (a), (b) and (c) of this section except for the provisions of this subsection (ii).

(h) The commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by subsections (a) through (g) of this section, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of subsections (a), (b) and (c) of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(i) This section shall take effect January 1, 1966.

WV Legislature

§33-5-31. Proxies, consents and authorizations in respect of any voting security issued by a domestic insurer.

(a) The commissioner may, by regulation, prescribe the form, content and manner of solicitation of any proxy, consent or authorization in respect of any voting security issued by a domestic insurer as necessary or appropriate in the public interest or for the proper protection of investors in the voting securities issued by such insurer, or to insure the fair dealing in such voting securities.

(b) No person and no domestic insurer or any director, officer or employee of such insurer shall solicit or permit the use of his name to solicit, by mail or otherwise, any person to give any proxy, consent or authorization in respect of any voting security issued by such insurer in contravention of any rule or regulation the commissioner may prescribe pursuant to this section.

(c) Failure to comply with any rule or regulation of the commissioner made pursuant to this section shall be unlawful and any proxy or consent obtained in violation of this section or in contravention of any rule or regulation issued pursuant thereto shall be void. Any domestic insurer or any person (who is legally entitled to vote, consent or authorize by virtue of being the holder of record of such a voting security) or the commissioner, if any of the foregoing parties shall fail to act within fifteen days after the date on which such vote was cast or counted, may enforce compliance with the rules and regulations made pursuant to this section, by appropriate action in law or equity: Provided, That no suit shall be brought more than thirty days after the date on which such vote, consent or authorization was to have been effected.

(d) None of the provisions of this section shall apply to voting securities of a domestic insurer if such voting securities shall be registered pursuant to section twelve of the Securities Exchange Act of 1934, as amended.

(e) The term "voting security" as used in this section shall mean any instrument which, in law or by contract, gives the holder the right to vote, consent or authorize any corporate action of an insurer.

WV Legislature

§33-5-32. Principal place of business of domestic insurers.

Any domestic insurer which moves or maintains its principal office or place of business outside the State of West Virginia after June 1, 1969, shall not thereafter be licensed as a domestic insurer in this state.

For purposes of this article, "principal office or place of business" means the single state in which the direction, control and coordination of the operations of the insurer as a whole are primarily exercised, with consideration being given to, but not limited to:

(1) The state in which the primary executive and administrative headquarters of the insurer is located;

(2) The state in which the principal office of the chief executive officer of the insurer is located;

(3) The state in which the assets and books and records of the insurer are located;

(4) The state in which the board of directors (or similar governing body) of the insurer conducts the majority of its meetings;

(5) The state in which the executive or management committee of the board of directors (or similar governing body) of the insurer conducts the majority of its meetings; and

(6) The state from which the management of the overall operations of the insurer is directed.

WV Legislature