WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

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ENROLLED

HOUSE BILL No. 740

(By Mr. Reiser)

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PASSED March 5, 1974

In Effect Ninety Days From Passage

C 641

FILES IN THE OFFICE
EUGENE R. HOBKELL, JR.
SECRETARY OF STATE
THIS DATE 3-19-74
AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-seven, relating to insurance holding company systems; short title; definitions; filing requirements; statements; hearings; registration; examination; confidentiality; criminal proceedings; receivership; revocation, suspension and renewal of licenses; criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-seven, to read as follows:

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.


1 This article may be cited as the “West Virginia Insurance Holding Company Systems Act”.


1 As used in this article:

2 (a) An “affiliate” of, or person “affiliated” with, a specific person, is a person that, directly or indirectly through one
or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) "Commissioner" means the insurance commissioner, his deputies, or the insurance department, as appropriate.

(c) "Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (b)(i), section four of this article that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) "Insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(e) "Insurer" means any person or persons or corporation, partnership or company authorized by the laws of this state to transact the business of insurance in this state, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(f) A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not
include any securities broker performing no more than the usual and customary broker’s function.

(g) A “securityholder” of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) A “subsidiary” of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(i) “Voting security” includes any security convertible into or evidencing a right to acquire a voting security.

§33-27-3. Acquisition of control of or merger with domestic insurer.

(a) Filing requirements.—No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and, to the extent permitted by applicable federal laws, rules and regulations, such insurer has sent to its shareholders a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

For purposes of this section: A domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.
(b) **Content of statement.**—The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information.

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called “acquiring party”), and

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(ii) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person’s subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph (i) of this subsection.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration: *Provided,* That where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.
(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements or understanding with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to
acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions (1) through (12) of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by subdivisions (1) through (12) shall be given with respect to such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) Alternative filing materials.—If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration state-
ment under the Securities Act of 1933 or in circumstances
requiring the disclosure of similar information under the
Securities Exchange Act of 1934, or under a state law
requiring similar registration or disclosure, the person required
to file the statement referred to in subsection (a) may utilize
such documents in furnishing the information called for by
that statement.

(d) Approval by commissioner: Hearings.

(1) The commissioner shall approve any merger or other
acquisition of control referred to in subsection (a) unless,
after a public hearing thereon, he finds that any of the
following conditions exist:

(i) After the change of control the domestic insurer
referred to in subsection (a) would not be able to satisfy
the requirements for the issuance of a license to write the
line or lines of insurance for which it is presently authorized;

(ii) the effect of the merger or other acquisition of
control would be substantially to lessen competition in in-

surance in this state or tend to create a monopoly therein;

(iii) the financial condition of any acquiring party is such
as might jeopardize the financial stability of the insurer,
or prejudice the interest of its policyholders or the interests
of any remaining securityholders who are unaffiliated with
such acquiring party;

(iv) the terms of the offer, request, invitation, agreement
or acquisition referred to in subsection (a) are unfair and
unreasonable to the securityholders of the insurer;

(v) the plans or proposals which the acquiring party has
to liquidate the insurer, sell its assets or consolidate or
merge it with any person, or to make any other material
change in its business or corporate structure or management,
are unfair and unreasonable to policyholders of the insurer
and not in the public interest; or

(vi) the competence, experience and integrity of those
persons who would control the operation of the insurer are
such that it would not be in the interest of policyholders of
the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subdivision (d)(1) of this section shall be held within sixty days after the statement required by subsection (a) is filed, and at least fifteen days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within forty-five days after the conclusion of such hearing.

(e) Mailings to shareholders; payment of expenses.—To the extent permitted by applicable federal laws, rules and regulations, all statements, amendments, or other material filed pursuant to subsections (a) or (b) of this section, and all notices of public hearings held pursuant to subsection (d) of this section, shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(f) Exemptions.—The provisions of this section shall not apply to:

(i) Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of this section of any voting security referred to in said subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding;

(ii) any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (1) not having been made or entered into for the purpose and not having the effect of changing or influencing the
control of a domestic insurer, or (2) as otherwise not com-
prehended within the purposes of this section.

(g) Violations.—The following shall be violations of this
section:

(i) The failure to file any statement, amendment or other
material required to be filed pursuant to subsections (a) or
(b) of this section; or

(ii) the effectuation or any attempt to effectuate an
acquisition of control of, or merger with, a domestic insurer
unless the commissioner has given his approval thereto.

(h) Jurisdiction; consent to service of process.—The courts
of this state are hereby vested with jurisdiction over every
person not resident, domiciled or authorized to do business
in this state who files a statement with the commissioner
under this section, and over all actions involving such person
arising out of violations of this section, and each such person
shall be deemed to have performed acts equivalent to and
constituting an appointment by such a person of the auditor
of the state to be his true and lawful attorney upon whom
may be served all lawful process in any action, suit or
proceeding arising out of violations of this section. Copies
of all such lawful process shall be served on the auditor and
transmitted by registered or certified mail by the auditor
to such person at his last known address.

§33-27-4. Registration of insurers.

(a) Registration.—Every insurer which is authorized to do
business in this state and which is a member of an insurance
holding company system shall register with the commissioner,
except a foreign insurer subject to disclosure requirements and
standards adopted by statute or regulation in the jurisdiction of
its domicile which are substantially similar to those contained
in this section. Any insurer which is subject to registration un-
der this section shall register within sixty days after the effec-
tive date of this article or fifteen days after it becomes subject
to registration, whichever is later, unless the commissioner for
good cause shown extends the time for registration, and then
within such extended time. The commissioner may require any
authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Information and form required.—Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(i) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(ii) The identity of every member of the insurance holding company system.

(iii) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(1) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates:

(2) Purchases, sales or exchanges of assets;

(3) Transactions not in the ordinary course of business;

(4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principals; and

(6) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company.

(iv) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.
(c) Materially.—No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purpose of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.

(d) Amendments to registration statements.—Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen days after the end of the month in which it learns of each such change or addition: Provided, That, subject to subsection (c) of section five of this article, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof.

(e) Termination of registration.—The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) Consolidated filing.—The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) Alternative registration.—The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(h) Exemptions.—The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.
(i) **Disclaimer.**—Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) **Violations.**—The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

§33-27-5. **Standards.**

(a) **Transactions with affiliates.**—Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable:

(2) The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions; and

(3) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) **Adequacy of surplus.**—For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets,
tal and surplus, reserves, premium writings, insurance in force
and other appropriate criteria;

(2) The extent to which the insurer's business is diversified
among the several lines of insurance;

(3) The number and size of risks insured in each line of
business;

(4) The extent of the geographical dispersion of the in-
surer's insured risks;

(5) The nature and extent of the insurer's reinsurance pro-
gram;

(6) The quality, diversification and liquidity of the insur-
er's investment portfolio;

(7) The recent past and projected future trend in the size
of the insurer's surplus as regards policyholders;

(8) The surplus as regards policyholders maintained by
other comparable insurers; and

(9) The adequacy of the insurer's reserves.

(c) Dividends and other distributions.—No insurer subject
to registration under section four of this article shall pay any
extraordinary dividend or make any other extraordinary dis-
tribution to its shareholders until (i) thirty days after the com-
missioner has received notice of the declaration thereof and
has not within such period disapproved such payment, or (ii)
the commissioner shall have approved such payment within
such thirty-day period.

For purposes of this section, an extraordinary dividend or
distribution includes any dividend or distribution of cash or
other property, whose fair market value together with that of
other dividends or distributions made within the preceding
twelve months exceeds the greater of (i) ten percent of such
insurer's surplus as regards policyholders as of the thirty-first
day of December next preceding, or (ii) the net gain from
operations of such insurer, if such insurer is a life insurer, or
the net investment income, if such insurer is not a life insurer,
for the twelve-month period ending the thirty-first day of De-
Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the commissioner has approved the payment of such dividend or distribution or (ii) the commissioner has not disapproved such payment within the thirty-day period referred to above.


(a) Power of commissioner.—Subject to the limitation contained in this section and in addition to the powers which the commissioner has under other articles of this chapter relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section four of this article to produce such records, books or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event that such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.

(b) Purpose and limitation of examination.—The commissioner shall exercise his power under subsection (a) above only if the examination of the insurer under other articles of this chapter is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) Use of consultants.—The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) above. Any person so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Expenses.—Each registered insurer producing for examination records, books and papers pursuant to subsection
(a) above shall be liable for and shall pay the expense of such examination in accordance with applicable laws of this state.


All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section six of this article and all information reported pursuant to section four of this article, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

§33-27-8. Injunctions; prohibitions against voting securities; sequestration of voting securities.

(a) Injunctions.—Whenever it appears to the commissioner that any person or any director, officer, employee or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the circuit court for an order enjoining such person or such director, officer, employee or agent thereof from violating or continuing to violate this chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(b) Voting of securities; when prohibited.—No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the
affirmative vote of a percentage of shares may be taken as
though such securities were not issued and outstanding; but
no action taken at any such meeting shall be invalidated by
the voting of such securities, unless the action would materially
affect control of the insurer or unless the courts of this state
have so ordered. If an insurer or the commissioner has reason
to believe that any security of the insurer has been or is about
to be acquired in contravention of the provisions of this article
or of any rule, regulation or order issued by the commissioner
hereunder the insurer or the commissioner may apply to the
circuit court to enjoin any offer, request, invitation, agreement
or acquisition made in contravention of section four of this
article, or any rule, regulation or order issued by the commis­sioner thereunder to enjoin the voting of any security so ac­quired, to void any vote of such security already cast at any
meeting of shareholders, and for such other equitable relief
as the nature of the case and the interests of the insurer's
policyholders, creditors and shareholders or the public may
require.

(c) Sequestration of voting securities.—In any case where a
person has acquired or is proposing to acquire any voting se­curities in violation of this article or any rule, regulation or
order issued by the commissioner hereunder, the circuit court
may, on such notice as the court deems appropriate, upon the
application of the insurer or the commissioner seize or seques­ter any voting securities of the insurer owned directly or in­directly by such person, and issue such orders with respect
thereto as may be appropriate to effectuate the provisions of
this article. Notwithstanding any other provisions of law, for
the purposes of this article, the situs of the ownership of the
securities of domestic insurers shall be deemed to be in this
state.


Whenever it appears to the commissioner that any person
or any director, officer, employee or agent thereof has com­mitted a willful violation of this article, the commissioner may
cause criminal proceedings to be instituted against such per­son or the responsible director, officer, employee or agent
thereof. Any insurer who willfully violates this article shall be
guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand dollars. Any individual who willfully violates this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand dollars or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, be imprisoned not more than two years or both fined and imprisoned.


Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may take possession of the property of such domestic insurer and proceed as provided in article ten of this chapter.

§33-27-11. Revocation, suspension or nonrenewal of insurer's license.

Whenever it appears to the commissioner that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public.

§33-27-12. Conflict with other laws.

All laws and parts of laws of this state inconsistent with this article are hereby superseded with respect to matters covered by this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ______ approved ______ this the ______ day of ______, 1974.

Governor