

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974



ENROLLED

HOUSE BILL No. 740

(By Mr. Seiber)



PASSED March 5, 1974

In Effect Unity Camp from Passage



FILED IN THE OFFICE
REC'D BY PERSONNEL DIV.
SECRETARY OF STATE
THIS DATE 3-19-74

740

ENROLLED

H. B. 740

(By MR. SEIBERT)

[Passed March 5, 1974; in effect ninety days from passage.]

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.

§33-27-1. Short title.

- 1 This article may be cited as the "West Virginia Insurance
- 2 Holding Company Systems Act".

§33-27-2. Definitions.

- 1 As used in this article:
- 2 (a) An "affiliate" of, or person "affiliated" with, a specific
- 3 person, is a person that, directly or indirectly through one

4 or more intermediaries, controls, or is controlled by, or is
5 under common control with, the person specified.

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

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

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

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

38 (f) A "person" is an individual, a corporation, a part-
39 nership, an association, a joint stock company, a trust, an
40 unincorporated organization, any similar entity or any com-
41 bination of the foregoing acting in concert, but shall not

42 include any securities broker performing no more than the
43 usual and customary broker's function.

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

49 (h) A "subsidiary" of a specified person is an affiliate
50 controlled by such person directly or indirectly through one
51 or more intermediaries.

52 (i) "Voting security" includes any security convertible
53 into or evidencing a right to acquire a voting security.

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

1 (a) *Filing requirements.*—No person other than the issuer
2 shall make a tender offer for or a request or invitation
3 for tenders of, or enter into any agreement to exchange
4 securities for, seek to acquire or acquire, in the open market
5 or otherwise, any voting security of a domestic insurer if,
6 after the consummation thereof, such person would, directly
7 or indirectly (or by conversion or by exercise of any right
8 to acquire) be in control of such insurer, and no person shall
9 enter into an agreement to merge with or otherwise to acquire
10 control of a domestic insurer unless, at the time any such
11 offer, request or invitation is made or any such agreement
12 is entered into, or prior to the acquisition of such securities if
13 no offer or agreement is involved, such person has filed with
14 the commissioner and has sent to such insurer, and, to the
15 extent permitted by applicable federal laws, rules and regu-
16 lations, such insurer has sent to its shareholders a statement
17 containing the information required by this section and such
18 offer, request, invitation, agreement or acquisition has been
19 approved by the commissioner in the manner hereinafter
20 prescribed.

21 For purposes of this section: A domestic insurer shall
22 include any other person controlling a domestic insurer
23 unless such other person is either directly or through its
24 affiliates primarily engaged in business other than the business
25 of insurance.

26 (b) *Content of statement.*—The statement to be filed with
27 the commissioner hereunder shall be made under oath or
28 affirmation and shall contain the following information.

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

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

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

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

57 (3) Fully audited financial information as to the earnings
58 and financial condition of each acquiring party for the
59 preceding five fiscal years of each such acquiring party
60 (or for such lesser period as such acquiring party and any
61 predecessors thereof shall have been in existence), and similar
62 unaudited information as of a date not earlier than ninety
63 days prior to the filing of the statement.

64 (4) Any plans or proposals which each acquiring party
65 may have to liquidate such insurer, to sell its assets or
66 merge or consolidate it with any person, or to make any
67 other material change in its business or corporate structure or
68 management.

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

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

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

89 (8) A description of the purchase of any security re-
90 ferred to in subsection (a) during the twelve calendar months
91 preceding the filing of the statement, by any acquiring
92 party, including the dates of purchase, names of the pur-
93 chasers, and consideration paid or agreed to be paid therefor.

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

99 (10) Copies of all tender offers for, requests or invita-
100 tions for tenders of, exchange offers for, and agreements to

101 acquire or exchange any securities referred to in subsection
102 (a), and (if distributed) of additional soliciting material
103 relating thereto.

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

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

113 If the person required to file the statement referred to
114 in subsection (a) is a partnership, limited partnership, syndi-
115 cate or other group, the commissioner may require that
116 the information called for by subdivisions (1) through (12)
117 of this subsection shall be given with respect to each partner
118 of such partnership or limited partnership, each member of
119 such syndicate or group, and each person who controls such
120 partner or member. If any partner, member or person is
121 a corporation or the person required to file the statement
122 referred to in subsection (a) is a corporation, the com-
123 missioner may require that the information called for by
124 subdivisions (1) through (12) shall be given with respect
125 to such corporation, and each person who is directly or
126 indirectly the beneficial owner of more than ten percent of
127 the outstanding voting securities of such corporation.

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

136. (c) *Alternative filing materials.*—If any offer, request, in-
137 vitation, agreement or acquisition referred to in subsection
138 (a) is proposed to be made by means of a registration state-

139 ment under the Securities Act of 1933 or in circumstances
140 requiring the disclosure of similar information under the
141 Securities Exchange Act of 1934, or under a state law
142 requiring similar registration or disclosure, the person required
143 to file the statement referred to in subsection (a) may utilize
144 such documents in furnishing the information called for by
145 that statement.

146 (d) *Approval by commissioner: Hearings.*

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

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

155 (ii) the effect of the merger or other acquisition of
156 control would be substantially to lessen competition in in-
157 surance in this state or tend to create a monopoly therein;

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

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

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

172 (vi) the competence, experience and integrity of those
173 persons who would control the operation of the insurer are
174 such that it would not be in the interest of policyholders of

175 the insurer and of the public to permit the merger or other
176 acquisition of control.

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

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

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

203 (i) Any offers, requests, invitations, agreements or ac-
204 quisitions by the person referred to in subsection (a) of
205 this section of any voting security referred to in said sub-
206 section (a) which, immediately prior to the consummation
207 of such offer, request, invitation, agreement or acquisition,
208 was not issued and outstanding;

209 (ii) any offer, request, invitation, agreement or acqui-
210 sition which the commissioner by order shall exempt therefrom
211 as (1) not having been made or entered into for the purpose
212 and not having the effect of changing or influencing the

213 control of a domestic insurer, or (2) as otherwise not com-
214 prehended within the purposes of this section.

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

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

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

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

§33-27-4. Registration of insurers.

1 (a) *Registration.*—Every insurer which is authorized to do
2 business in this state and which is a member of an insurance
3 holding company system shall register with the commissioner,
4 except a foreign insurer subject to disclosure requirements and
5 standards adopted by statute or regulation in the jurisdiction of
6 its domicile which are substantially similar to those contained
7 in this section. Any insurer which is subject to registration un-
8 der this section shall register within sixty days after the effec-
9 tive date of this article or fifteen days after it becomes subject
10 to registration, whichever is later, unless the commissioner for
11 good cause shown extends the time for registration, and then
12 within such extended time. The commissioner may require any

13 authorized insurer which is a member of a holding company
14 system which is not subject to registration under this section
15 to furnish a copy of the registration statement or other infor-
16 mation filed by such insurance company with the insurance
17 regulatory authority of domiciliary jurisdiction.

18 (b) *Information and form required.*—Every insurer subject
19 to registration shall file a registration statement on a form pro-
20 vided by the commissioner, which shall contain current infor-
21 mation about:

22 (i) The capital structure, general financial condition, own-
23 ership and management of the insurer and any person controll-
24 ing the insurer.

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

27 (iii) The following agreements in force, relationships sub-
28 sisting, and transactions currently outstanding between such
29 insurer and its affiliates:

30 (1) Loans, other investments, or purchases, sales or ex-
31 changes of securities of the affiliates by the insurer or of the
32 insurer by its affiliates:

33 (2) Purchases, sales or exchanges of assets;

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

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

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

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

44 (iv) Other matters concerning transactions between regist-
45 ered insurers and any affiliates as may be included from time
46 to time in any registration forms adopted or approved by the
47 commissioner.

48 (c) *Materially*.—No information need be disclosed on the
49 registration statement filed pursuant to subsection (b) of this
50 section if such information is not material for the purpose of
51 this section. Unless the commissioner by rule, regulation or
52 order provides otherwise, sales, purchases, exchanges, loans
53 or extensions of credit, or investments, involving one-half of
54 one percent or less of an insurer's admitted assets as of the
55 thirty-first day of December next preceding shall not be deemed
56 material for purposes of this section.

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

67 (e) *Termination of registration*.—The commissioner shall
68 terminate the registration of any insurer which demonstrates
69 that it no longer is a member of an insurance holding com-
70 pany system.

71 (f) *Consolidated filing*.—The commissioner may require or
72 allow two or more affiliated insurers subject to registration
73 hereunder to file a consolidated registration statement or con-
74 solidated reports amending their consolidated registration state-
75 ment or their individual registration statements.

76 (g) *Alternative registration*.—The commissioner may allow
77 an insurer which is authorized to do business in this state and
78 which is part of an insurance holding company system to regis-
79 ter on behalf of any affiliated insurer which is required to
80 register under subsection (a) of this section and to file all in-
81 formation and material required to be filed under this section.

82 (h) *Exemptions*.—The provisions of this section shall not
83 apply to any insurer, information or transaction if and to the
84 extent that the commissioner by rule, regulation or order shall
85 exempt the same from the provisions of this section.

86 (i) *Disclaimer*.—Any person may file with the commis-
87 sioner a disclaimer of affiliation with any authorized insurer or
88 such a disclaimer may be filed by such insurer or any member
89 of an insurance holding company system. The disclaimer shall
90 fully disclose all material relationships and bases for affilia-
91 tion between such person and such insurer as well as the basis
92 for disclaiming such affiliation. After a disclaimer has been
93 filed, the insurer shall be relieved of any duty to register or
94 report under this section which may arise out of the insurer's
95 relationship with such person unless and until the commis-
96 sioner disallows such a disclaimer. The commissioner shall dis-
97 allow such a disclaimer only after furnishing all parties in in-
98 terest with notice and opportunity to be heard and after mak-
99 ing specific findings of fact to support such disallowance.

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

§33-27-5. Standards.

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

4 (1) The terms shall be fair and reasonable:

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

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

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

17 (1) The size of the insurer as measured by its assets, capi-

18 tal and surplus, reserves, premium writings, insurance in force
19 and other appropriate criteria;

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

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

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

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

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

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

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

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

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

43 For purposes of this section, an extraordinary dividend or
44 distribution includes any dividend or distribution of cash or
45 other property, whose fair market value together with that of
46 other dividends or distributions made within the preceding
47 twelve months exceeds the greater of (i) ten percent of such
48 insurer's surplus as regards policyholders as of the thirty-first
49 day of December next preceding, or (ii) the net gain from
50 operations of such insurer, if such insurer is a life insurer, or
51 the net investment income, if such insurer is not a life insurer,
52 for the twelve-month period ending the thirty-first day of De-

53 cember next preceding, but shall not include pro rata distri-
54 butions of any class of the insurer's own securities.

55 Notwithstanding any other provision of law, an insurer may
56 declare an extraordinary dividend or distribution which is con-
57 ditional upon the commissioner's approval thereof, and such a
58 declaration shall confer no rights upon shareholders until (i)
59 the commissioner has approved the payment of such dividend
60 or distribution or (ii) the commissioner has not disapproved
61 such payment within the thirty-day period referred to above.

§33-27-6. Examination.

1 (a) *Power of commissioner.*—Subject to the limitation con-
2 tained in this section and in addition to the powers which the
3 commissioner has under other articles of this chapter relating to
4 the examination of insurers, the commissioner shall also have
5 the power to order any insurer registered under section four of
6 this article to produce such records, books or other informa-
7 tion papers in the possession of the insurer or its affiliates as
8 shall be necessary to ascertain the financial condition or legal-
9 ity of conduct of such insurer. In the event that such insurer
10 fails to comply with such order, the commissioner shall have
11 the power to examine such affiliates to obtain such informa-
12 tion.

13 (b) *Purpose and limitation of examination.*—The commis-
14 sioner shall exercise his power under subsection (a) above only
15 if the examination of the insurer under other articles of this
16 chapter is inadequate or the interests of the policyholders of
17 such insurer may be adversely affected.

18 (c) *Use of consultants.*—The commissioner may retain at
19 the registered insurer's expense such attorneys, actuaries, ac-
20 countants and other experts not otherwise a part of the com-
21 missioner's staff as shall be reasonably necessary to assist in
22 the conduct of the examination under subsection (a) above.
23 Any person so retained shall be under the direction and con-
24 trol of the commissioner and shall act in a purely advisory
25 capacity.

26 (d) *Expenses.*—Each registered insurer producing for ex-
27 amination records, books and papers pursuant to subsection

28 (a) above shall be liable for and shall pay the expense of such
29 examination in accordance with applicable laws of this state.

§33-27-7. Confidential treatment.

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

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

1 (a) *Injunctions.*—Whenever it appears to the commissioner
2 that any person or any director, officer, employee or agent
3 thereof has committed or is about to commit a violation of this
4 article or of any rule, regulation or order issued by the com-
5 missioner hereunder, the commissioner may apply to the cir-
6 cuit court for an order enjoining such person or such director,
7 officer, employee or agent thereof from violating or continuing
8 to violate this chapter or any such rule, regulation or order,
9 and for such other equitable relief as the nature of the case
10 and the interests of the insurer's policyholders, creditors and
11 shareholders or the public may require.

12 (b) *Voting of securities; when prohibited.*—No security
13 which is the subject of any agreement or arrangement regard-
14 ing acquisition, or which is acquired or to be acquired, in
15 contravention of the provisions of this article or of any rule,
16 regulation or order issued by the commissioner hereunder may
17 be voted at any shareholders' meeting, or may be counted for
18 quorum purposes, and any action of shareholders requiring the

19 affirmative vote of a percentage of shares may be taken as
20 though such securities were not issued and outstanding; but
21 no action taken at any such meeting shall be invalidated by
22 the voting of such securities, unless the action would materially
23 affect control of the insurer or unless the courts of this state
24 have so ordered. If an insurer or the commissioner has reason
25 to believe that any security of the insurer has been or is about
26 to be acquired in contravention of the provisions of this article
27 or of any rule, regulation or order issued by the commissioner
28 hereunder the insurer or the commissioner may apply to the
29 circuit court to enjoin any offer, request, invitation, agreement
30 or acquisition made in contravention of section four of this
31 article, or any rule, regulation or order issued by the commis-
32 sioner thereunder to enjoin the voting of any security so ac-
33 quired, to void any vote of such security already cast at any
34 meeting of shareholders, and for such other equitable relief
35 as the nature of the case and the interests of the insurer's
36 policyholders, creditors and shareholders or the public may
37 require.

38 (c) *Sequestration of voting securities.*—In any case where a
39 person has acquired or is proposing to acquire any voting se-
40 curities in violation of this article or any rule, regulation or
41 order issued by the commissioner hereunder, the circuit court
42 may, on such notice as the court deems appropriate, upon the
43 application of the insurer or the commissioner seize or seques-
44 ter any voting securities of the insurer owned directly or in-
45 directly by such person, and issue such orders with respect
46 thereto as may be appropriate to effectuate the provisions of
47 this article. Notwithstanding any other provisions of law, for
48 the purposes of this article, the situs of the ownership of the
49 securities of domestic insurers shall be deemed to be in this
50 state.

§33-27-9. Criminal Proceedings.

1 Whenever it appears to the commissioner that any person
2 or any director, officer, employee or agent thereof has com-
3 mitted a willful violation of this article, the commissioner may
4 cause criminal proceedings to be instituted against such per-
5 son or the responsible director, officer, employee or agent
6 thereof. Any insurer who willfully violates this article shall be

7 guilty of a misdemeanor, and, upon conviction thereof, shall be
8 fined not more than ten thousand dollars. Any individual who
9 willfully violates this article shall be guilty of a misdemeanor,
10 and, upon conviction thereof, shall be fined not more than
11 ten thousand dollars or, if such willful violation involves the
12 deliberate perpetration of a fraud upon the commissioner, be
13 imprisoned not more than two years or both fined and im-
14 prisoned.

§33-27-10. Receivership.

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

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

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

§33-27-12. Conflict with other laws.

1 All laws and parts of laws of this state inconsistent with
2 this article are hereby superseded with respect to matters
3 covered by this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Darrel Darby
Chairman Senate Committee

James E. Johnston Sr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Weason
Clerk of the Senate

V. Blankenship
Clerk of the House of Delegates

H. P. Brotherton, Jr.
President of the Senate

Lewis F. McManis
Speaker House of Delegates

The within *approved* this the *18th*
March
day of _____, 1974.

Paula Shaw Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/12/74

Time 4:55 p.m.