WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED

HOUSE BILL No. 2588

(By Mr. Speaker, Mr. Chambers, and Del. R. Bank)
[By Request of the Executive]

Passed
April 8, 1989

In Effect Ninety Days From Passage
ENROLLED

H. B. 2588

(By Mr. Speaker, Mr. Chambers, and Delegate R. Burk)

[By Request of the Executive]

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty-four, article six; sections two and sixteen, article twenty-two; section two, article twenty-three; section four, article twenty-four; section eight, article twenty-five; section twenty-two, article twenty-five-a; section six, article thirty-one; and section three, article thirty-two all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one as amended; to further amend said article twenty-five by adding thereto a new section, designated section eighteen, to further amend said article twenty-five-a by adding thereto a new section, designated section twenty-nine; and to further amend said chapter thirty-three by adding thereto a new article, designated article thirty-three, all relating to domestic insurers, and requiring annual examinations, by independent certified public accountants; increasing fees on rate and form filings; requiring farmers mutual fire insurance companies to pay form filing fees with annual reports; and subjecting certain other corporations and organizations to the rate and form filing fees.

Be it enacted by the Legislature of West Virginia:

That section thirty-four; article six; sections two and sixteen, article twenty-two; section two, article twenty-three; section four, article twenty-four; section eight, article twenty-five; section twenty-two, article twenty-five-a; section six, article
thirty-one; and section three, article thirty-two, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article twenty-five be further amended by adding thereto a new section, designated section eighteen; that said article twenty-five-a further amended by adding thereto a new section, designated section twenty-nine; and that said chapter thirty-three be further amended by adding thereto a new article, designated article thirty-three, all to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-34. Fee for form and rate filing.

1 A fee of twenty-five dollars for every form filing and twenty-five dollars for every rate filing shall be submitted with each filing. If a form filing or rate filing is made on behalf of more than one insurer, other than a filing made by a rating organization licensed by the commissioner pursuant to section six, article twenty of this chapter, the fee shall be submitted as if the filing were made by each individual insurer. Fees submitted pursuant to this section shall not be refunded if the form filing or rate filing, for which the fee was submitted, is disapproved in whole or in part by the commissioner. The refiling of a form filing or rate filing previously disapproved by the commissioner shall be considered a new filing for the purposes of the filing fee: Provided, That any request by the commissioner for additional information pertaining to a form filing shall not be considered a new filing for purposes of the filing fee. All fees collected pursuant to this section shall be used by the commissioner for the operation of the department of insurance.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Other provisions of chapter applicable.

1 Each such company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions) except that section sixteen of article four shall not
be applicable thereto, article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article ten no assessment shall be levied against any former member of a farmers' mutual fire insurance company who is no longer a member of the company at the time the order to show cause was issued, article eleven (unfair practices and frauds), article twelve (agents, brokers and solicitors) except that the agents' license fee shall be five dollars, article twenty-six (West Virginia Insurance Guaranty Association Act), article thirty (mine subsidence insurance) except that under the provisions of section six, article thirty, a farmers' mutual insurance company shall have the option of offering mine subsidence coverage to all of its policyholders but shall not be required to do so and article thirty-three (annual audited financial report); but only to the extent these provisions are not inconsistent with the provisions of this article.

§33-22-16. Fees.

Such company at the time of making its annual report shall pay to the commissioner a filing fee of twenty-five dollars, all fees so collected to be used for the purposes specified in section thirteen, article three of this chapter. No other fees or taxes shall be levied against such companies except the agent's license fee, the form filing fee required by the provisions of section thirty-four, article six of this chapter and the expenses of examination thereof by the commissioner.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Other provisions of chapter applicable.

Every fraternal benefit society shall be governed and be subject, to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions), article six, section thirty (fee for form and rate filing), article ten (rehabilitation and liquidation), article eleven (unfair trade practices), article twelve (agents, brokers, solicitors and excess lines), article
ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND DENTAL SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of other laws.

Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner) except that under section nine of article two examinations shall be conducted at least once every four years, article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article six, section thirty-four (fee for form and rate filing), article ten (rehabilitation and liquidation), article eleven (unfair practices and frauds), article twelve (agents, brokers and solicitors) except that the agent's license fee shall be five dollars, article fifteen-a (long-term care insurance), section three-c, article sixteen (group accident and sickness insurance), section three-d, article sixteen (medicare supplement), section four-c, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder), article twenty-eight (individual accident and sickness insurance minimum standards) and article thirty-three (annual audited financial report); and no other provision of this chapter shall apply to such corporations unless specifically made applicable by the provisions of this article. If, however, any such corporation shall be converted into a corporation organized for a pecuniary profit, or if it shall transact business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.
§33-25-8. Commissioner to enforce article; approval of contracts, forms and rates; reserve fund; membership fee.

(a) It shall be the duty of the commissioner to enforce the provisions of this article.

(b) No such corporation shall deliver or issue for delivery any subscriber's contract, changes in the terms of such contract, application, rider or endorsement until a copy thereof and the rates pertaining thereto have been filed with and approved by the commissioner. All such forms filed with the commissioner shall be deemed approved after the expiration of thirty days from the date of such filing unless the commissioner shall have disapproved the same, stating his reasons for such disapproval in writing, except that such period may be extended for an additional period not to exceed fifteen days upon written notice thereof from the commissioner to the applicant. Such forms may be used prior to the expiration of such periods if written approval thereof has been received from the commissioner.

(c) No rates to be charged subscribers shall be used or established by any such corporation unless and until the same have been filed with the commissioner and approved by him. The procedure for such filing and approval shall be the same as that prescribed in paragraph (b) of this section for the approval of forms. The commissioner shall approve all such rates which are not excessive, inadequate, or unfairly discriminatory.

(d) The commissioner shall pass upon the actuarial soundness of all direct health care services plans.

(e) The corporation shall accumulate a fund to be derived from a minimum of two percent of every subscriber's monthly premium which shall be known as a contingency and liability reserve fund except that the same shall not exceed an amount equal to three months' average obligation of said corporation, nor shall it fall below a minimum of one month's average obligation of said corporation. Said fund shall be expended by the corporation according to rules and regulations to be promulgated by the commissioner.
In addition to the above requirements, every subscriber shall pay into the corporation a membership fee equal to one monthly premium. The membership fee shall be collected in full by said corporation within ninety days of said subscriber's application for membership.

(f) Each such rate filing and each such form filing made with the commissioner pursuant to this section is subject to the filing fee of section thirty-four, article six of this chapter.


Every health care organization organized under the laws of this state is subject to the provisions of article thirty-three of this chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


Every health maintenance organization subject to this article shall pay to the commissioner the following fees: For filing an application for a certificate of authority or amendment thereto, two hundred dollars; for each form filing and for each rate filing, the fee as provided in section thirty-four, article six of this chapter; and for filing each annual report, twenty-five dollars. Fees charged under this section shall be for the purposes set forth in section thirteen, article three of this chapter.


Every health maintenance organization organized under the laws of this state is subject to the provisions of article thirty-three of this chapter.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-6. Formation of captive insurance companies in this state.

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) An association captive insurance company or an
industrial insured captive insurance company may be incorporated:

(1) As a stock insurer with its capital divided into shares and held by the stockholders; or

(2) As a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(c) A captive insurance company shall have at least one incorporator who shall be a resident of this state.

(d) Before the articles of association are transmitted to the secretary of state, the incorporators shall petition the commissioner to issue a certificate setting forth his finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such finding the commissioner shall consider:

(1) The character, reputation, financial standing and purpose of the incorporators;

(2) The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors; and

(3) Such other aspects as the commissioner shall deem advisable.

(e) The articles of association, such certificate and the organization fee shall be transmitted to the secretary of state, who shall thereupon record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this state shall be a resident of this state.

(h) Captive insurance companies formed under the provisions of this chapter shall have the privileges and be subject to the provisions of the general corporation law as well as the applicable provisions contained in this
chapter. Captive insurance companies are subject to the provisions of article thirty-three of this chapter. In the event of conflict between the provisions of said general corporation law and the provisions of this chapter, the latter shall control.

ARTICLE 32. RISK RETENTION ACT.

§33-32-3. Risk retention groups chartered in this state.

1 A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this article, must comply with all of the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state and with section four of this article to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this state. Risk retention groups are subject to the provisions of article thirty-three of this chapter. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance.

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-1. Declaration of policy and purpose.

1 The purpose of this article is to improve the insurance commissioner's surveillance of the financial condition of domestic insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

7 This article shall not prohibit or preclude or in any way limit the commissioner from performing examinations of insurers as specified in section nine, article two of this chapter or such other examinations as the commissioner may be authorized to perform by this chapter.
§33-33-2. Definitions.

(a) "Accountant," "certified public accountant (CPA)" and "independent public accountant" means an independent certified public accountant or accounting firm who has a license to practice issued by the state in which he resides or has his principal place of business.

(b) "Annual statement" means the annual financial statement required to be filed by insurers with the commissioner pursuant to the provisions of this chapter.

(c) "Audited financial report" means and includes those items specified in section four of this article.

(d) "Insurer" for purposes of this article means any domestic insurer as defined in section six, article one of this chapter, and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group.

§33-33-3. Filing and extensions for filing of annual audited financial reports.

(a) Annual audited financial reports must be filed by all insurers with the commissioner on or before the first day of June for the year ending the thirty-first day of December immediately preceding.

(b) Extensions of the filing date on the first day of June may be granted by the commissioner for thirty day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the commissioner of good cause for an extension. A request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.


(a) The annual audited financial report shall report
the financial condition of the insurer as of the end of the
most recent calendar year and the results of its
operations, changes in financial position and changes in
capital and surplus for the year then ended in confor-
mity with statutory accounting practices for preparation
of the annual statement or as otherwise permitted, by
the commissioner.

(b) The annual audited financial report shall include
the following:

(1) Report of independent certified public accountant;
(2) Balance sheet reporting admitted assets, liabilities,
capital and surplus;
(3) Statement of gain or loss from operations or
statement of revenue and expenses;
(4) Statement of changes in financial position or cash
flow statement;
(5) Statement of changes in capital and surplus;
(6) Notes to financial statements. These notes shall be
those required by generally accepted accounting prin-
ciples and shall include a reconciliation of differences,
if any, between the audited statutory financial state-
ments and the annual statement with a written descrip-
tion of the nature of these differences;
(7) The financial statements included in the audited
financial report shall be prepared in a form and using
language and groupings substantially the same as the
relevant sections of the annual statement of the insurer
filed with the commissioner; and:

(A) The financial statement shall be comparative,
presenting the amounts as of the thirty-first day of
December of the current year and the amounts as of the
immediately preceding thirty-first day of December.
(However, in the first year in which an insurer is
required to file an audited financial report, the compar-
ative data may be omitted.);

(B) Amounts may be rounded to the nearest thousand
dollars;
(8) Supplementary Data and Information. This shall include any additional clarifying information or data which the commissioner may require to be disclosed.

§33-33-5. Designation of independent certified public account. 

(a) Each insurer required by this article to file an annual audited financial report must, within sixty days after becoming subject to such requirements, register with the commissioner in writing the name and address of the certified public accountant or accounting firm (generally referred to in this article as the "accountant") retained to conduct the annual audit set forth in this article.

(b) The insurer shall obtain a letter from such accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of this code and rules that relate to accounting and financial matters and affirming that he will express his opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the commissioner specifying such exceptions as he may believe appropriate.

(c) If an accountant who was not the accountant for the immediately preceding filed audited financial report, is engaged to audit the insurer's financial statements, the insurer shall within thirty days of the date the accountant is engaged notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter stating whether in the twenty-four months preceding such engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in writing request such former accountant to furnish it a letter addressed to the insurer...
§33-33-6. Qualifications of independent certified public accountant.

(a) The commissioner shall not recognize any person as an independent certified public accountant who does not meet the requirements for the definition of "accountant" under section two of this article.

(b) The commissioner may hold a hearing to determine whether a certified public accountant is independent and considering the evidence presented, may rule that the accountant is not independent for purposes of expressing his opinion on the financial statements in the audited financial report made pursuant to this article and require the insurer to replace the accountant with another whose relationship with the insurer is independent within the meaning of this article.

§33-33-7. Consolidated or combined audits.

(a) The commissioner may, upon written application, permit any insurer that is a member of an insurance holding company system to file audited, consolidated or combined financial statements in lieu of separate annual audited financial statements if the commissioner, in his discretion, deems such method of filing reasonable and appropriate. Consolidated or combined filings will be considered reasonable and appropriate if the commissioner determines that the audit work performed under a consolidated filing is adequate to ascertain the financial condition of the insurer. If such approval is granted a columnar consolidating or combining worksheet shall be filed with the report incorporating the following:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

(b) The commissioner shall require any insurer to file separate annual audited financial statements although permission had previously been given to file on a consolidated basis or combined basis if the commissioner determines the reasons or circumstances given for approval of the consolidated audit, pursuant to subsection (a) of this section, no longer exist.

§33-33-8. Scope of examination and report of independent certified public accountant.

The examination of the insurer's financial statements by the independent certified public accountant shall be conducted in accordance with generally accepted auditing standards and such other procedures illustrated in the examiners' handbook promulgated by the national association of insurance commissioners as the independent certified public accountant deems necessary. The commissioner may from time to time prescribe that additional auditing procedures be observed by the accountant in the examination of the financial statements of insurers pursuant to this article.


The independent certified public accountant shall immediately notify, in writing, an officer or director of the insurer and the commissioner of any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the thirty-first day of December immediately preceding, or of any determi-
nation that the insurer does not meet the applicable minimum capital and surplus requirement of this chapter or in the case of an insurer not subject to capital and surplus requirement, that the surplus of the insurer is less than one hundred thousand dollars as of the thirty-first day of December immediately preceding. For purposes of this article material misstatement shall mean a misstatement that overstates the surplus as regards policyholders in single financial statement items by five percent or more, or when taken together with all financial statement items, the surplus as regards policyholders is overstated by ten percent or more.

§33-33-10. Evaluation of accounting procedures and system of internal control.  
(a) In addition to the annual audited financial reports, each insurer shall furnish the commissioner with a report of evaluation performed by the accountant, in connection with his examination, of the accounting procedures of the insurer and its system of internal control.

(b) A report of the evaluation by the accountant of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the commissioner at the time of filing of the annual audited financial report.

(c) This report shall follow generally the form for reports on internal control based on audits as prescribed in the then current volume of the professional standards of the American institute of certified public accountants.

§33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers. 
(a) Workpapers shall be kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to this examination of the financial statements of an insurer. Workpapers shall
include work programs, analyses, memoranda, letters of conformation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his examination of the financial statements of an insurer and which support his opinion thereon.

(b) Every insurer required to file an audited financial report pursuant to this article, shall require the accountant to make available for review by the commissioner the workpapers prepared in the conduct of his examination. The insurer shall require that the accountant retain the audit workpapers for a period of not less than five years after the period reported thereon.

(c) In the conduct of the aforementioned periodic review by the commissioner, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner.

§33-33-12. Examinations.

Examinations of insurers conducted by the commissioner pursuant to section nine, article two of this chapter may, at the discretion of the commissioner, include and be supplemented by audit procedures performed by an independent certified public accountant as herein provided.


Upon written application by an insurer, the commissioner may grant an exemption from compliance with this article if the commissioner finds, upon review of the application, that compliance with this article would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days of a denial of an insurer's written request for an exemption from this article, such insurer may request in writing a hearing on its application for an exemption.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederic L. Parry
Chairman Senate Committee

Chairman House Committee

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

J. W. Meldre
Clerk of the Senate

Donnell J. Hoag
Clerk of the House of Delegates

Larry R. Tindall
President of the Senate

Speaker of the House of Delegates

The within ___ approved this the ___ day of April, 1989.

Governor

Gaston Caperton