

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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## ENROLLED

*Com. Sub. for*  
**HOUSE BILL No. 4195**

(By Mr. *Speaker, Mr. Chambers + Del. R. Bunk*)

— ● —

Passed *March 10,* 1990

In Effect *90 Days from* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4195**  
(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)

[Passed March 10, 1990; in effect from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, seven, eight, ten, fourteen, eighteen, nineteen-a, twenty-one, twenty-nine and thirty-six, article ten, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article ten by adding thereto three new sections, designated sections thirty-seven, thirty-eight and thirty-nine; to amend and reenact section two, article twenty-two; section two, article twenty-three; section four, article twenty-four; section six, article thirty-one; and section three, article thirty-two, all of chapter thirty-three, to further amend said article twenty-four by adding thereto twenty-eight new sections designated sections fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two; to amend article twenty-five of said chapter thirty-three by adding thereto a new section, designated section nineteen; to amend article twenty-five-a of said chapter thirty-three by adding thereto a new section, designated section thirty; and to further

amend chapter thirty-three by adding thereto two new articles, designated articles thirty-four and thirty-five, all relating to insurance; rehabilitation and liquidation; definitions; jurisdiction; venue; appeal of delinquency proceedings; exclusive remedy; commencement of delinquency proceedings; injunction or other orders; grounds for rehabilitation of domestic insurers; grounds for conserving assets of foreign and alien insurer; order of rehabilitation; conduct of delinquency proceedings against domestic or alien insurers; proof of claims; priority of distribution; uniform insurers liquidation act; allowance of certain claims; creating preference among creditors; disbursement of assets; distribution of assets; unclaimed and withheld funds; immunity in receivership proceedings; representation of the special deputy supervisor; Farmers' Mutual fire insurance companies, applicability of other provisions; fraternal benefit societies, applicability of other provisions; hospital service corporations; medical service corporations; dental service corporations; exemptions; applicability of insurance laws; definitions; jurisdiction; venue and appeal of delinquency proceedings; exclusive remedy; commencement of delinquency proceedings; ex parte orders; injunctions and other orders; grounds for rehabilitation of a corporation; grounds for liquidation; grounds for administrative supervision; order of rehabilitation; order of liquidation; conduct of delinquency proceedings against a corporation; claims of nonresidents against a corporation; proof of claims; priority of certain claims; order of distribution; attachment; garnishment; execution; deposit of moneys collected; exemption of commissioner from fees; borrowing on pledge of assets; date rights fixed on liquidation; voidable transfers; priority of claims for compensation; offsets; allowance of claims; time within which claims to be filed; assessment; creating preference among creditors; disbursement of assets; distribution of assets; unclaimed and withheld funds; immunity in receivership proceedings; health care corporations, administrative supervision; health maintenance organization act, administrative supervision; captive insurance, corporate organization; risk retention act, charter and license

requirements for domestic groups; administrative supervision; definitions; applicability; notice to comply with written requirements of commissioner; noncompliance; administrative supervision; confidentiality of certain proceedings and records; prohibited acts during period of supervision; administrative election of proceedings; rules; meetings between the commissioner and the special deputy supervisor; special deputy supervisor appointed; expenses; immunity severability; criminal sanctions for failure to report impairment; definitions; duty to notify; and penalty.

*Be it enacted by the Legislature of West Virginia:*

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

### **CHAPTER 33. INSURANCE.**

#### **ARTICLE 10. REHABILITATION AND LIQUIDATION.**

##### **§33-10-1. Definitions.**

1 For the purpose of this article the following defini-  
2 tions shall apply:

3 (a) "Impairment" or "insolvency" means when the  
4 capital of a stock insurer, or the surplus of a mutual or  
5 reciprocal insurer shall not at least equal all liabilities  
6 and required reserves together with its total issued and  
7 outstanding capital stock if a stock insurer, or the  
8 minimum surplus if a mutual or reciprocal insurer,  
9 required by this chapter to be maintained for the kind  
10 or kinds of insurance it is then licensed to transact.

11 (b) "Insurer" means any person, firm, corporation,  
12 association or aggregation of persons doing an insurance  
13 business and which is or has been subject to the  
14 insurance supervisory authority of, or to liquidation,  
15 rehabilitation, reorganization or conservation by the  
16 commissioner or the equivalent insurance supervisory  
17 official of another state.

18 (c) "Delinquency proceeding" means any proceeding  
19 commenced against an insurer pursuant to this article  
20 for the purpose of liquidating, rehabilitating, reorgan-  
21 izing or conserving such insurer.

22 (d) "State" means any state, district or territory of the  
23 United States.

24 (e) "Foreign country" means any other jurisdiction not  
25 in any state.

26 (f) "Domiciliary state" means the state in which an  
27 insurer is incorporated or organized, or in the case of  
28 an alien insurer as defined in section eight, article one  
29 of this chapter, the state in which such insurer, having  
30 become authorized to do business in such state, has at  
31 the commencement of delinquency proceedings, the  
32 largest amount of its assets held in trust and assets held  
33 on deposit for the benefit of its policyholders or  
34 policyholders and creditors in the United States or its  
35 state of entry.

36 (g) "Ancillary state" means any state other than a  
37 domiciliary state.

38 (h) "Reciprocal state" means any state other than this

39 state in which in substance and effect the provisions of  
40 the Uniform Insurers Liquidation Act, as defined in  
41 section twenty-one of this article, are in force, including  
42 the provisions requiring that the insurance commis-  
43 sioner or equivalent insurance supervisory official be the  
44 receiver of a delinquent insurer.

45 (i) "General assets" means all property, real, personal  
46 or otherwise, not specifically mortgaged, pledged,  
47 deposited or otherwise encumbered for the security or  
48 benefit of specified persons or a limited class or classes  
49 of persons, and as to such specifically encumbered  
50 property the term includes all such property or its  
51 proceeds in excess of the amount necessary to discharge  
52 the sum or sums secured thereby. Assets held in trust  
53 and assets held on deposit for the security or benefit of  
54 all policyholders or all policyholders and creditors in  
55 more than a single state shall be deemed general assets.

56 (j) "Preferred claim" means any claim with respect to  
57 which the terms of this article accord priority of  
58 payments from the general assets of the insurer.

59 (k) "Special deposit claim" means any claim secured  
60 by a deposit made pursuant to statute for the security  
61 or benefit of a limited class or classes of persons, but  
62 not including any general assets.

63 (l) "Secured claim" means any claim secured by  
64 mortgage, trust deed, pledge, deposit as security,  
65 escrow, or otherwise, but not including special deposit  
66 claim or claims against general assets. The term also  
67 includes claims which more than four months prior to  
68 the commencement of delinquency proceedings in the  
69 state of the insurer's domicile have become liens upon  
70 specific assets by reason of judicial process.

71 (m) "Receiver" means receiver, liquidator, rehabilita-  
72 tor, or conservator as the context may require.

73 (n) "Guaranty association" means the West Virginia  
74 Insurance Guaranty Association created by article  
75 twenty-six of this chapter, the West Virginia Life and  
76 Health Insurance Guaranty Association Act created by  
77 article twenty-six-a of this chapter, and any other

78 similar entity now or hereafter created by the Legisla-  
79 ture of this state for the payment of claims of insolvent  
80 insurers.

81 (o) "Foreign guaranty association" means any similar  
82 entities now in existence in or hereafter created by the  
83 Legislature of any other state.

**§33-10-2. Jurisdiction, venue and appeal of delinquency  
proceedings; exclusive remedy.**

1 (a) The circuit courts of this state or the judges thereof  
2 in vacation are vested with exclusive original jurisdic-  
3 tion of delinquency proceedings under this article, and  
4 are authorized to make all necessary and proper orders  
5 to carry out the purposes of this article.

6 (b) The venue of delinquency proceedings against a  
7 domestic insurer shall be in the circuit court of the  
8 county of the insurer's principal place of business. The  
9 venue of such proceedings against foreign insurers, alien  
10 insurers or domestic insurers in which their principal  
11 place of business is outside of the State of West Virginia  
12 shall be in the circuit court of Kanawha county.

13 (c) With the exception of administrative supervision  
14 pursuant to article thirty-four of this chapter, delin-  
15 quency proceedings pursuant to this article shall  
16 constitute the sole and exclusive method of liquidating,  
17 rehabilitating, reorganizing or conserving an insurer,  
18 and no court shall entertain a petition for the commence-  
19 ment of such proceedings unless the same has been filed  
20 in the name of the state on the relation of the insurance  
21 commissioner.

22 (d) An appeal shall lie to the supreme court of appeals  
23 from an order granting or refusing rehabilitation,  
24 liquidation, or conservation, and from every other order  
25 in delinquency proceedings having the character of a  
26 final order as to the particular portion of the proceed-  
27 ings embraced therein.

28 (e) At any time after an order is made under section  
29 ten or eleven of this article, the commissioner may  
30 remove the principal office of the insurer proceeded  
31 against to Kanawha county. In the event of such

32 removal, the court wherein the proceeding was origi-  
 33 nally commenced shall, upon the application of the  
 34 commissioner, direct its clerk to transmit all the  
 35 pleadings, motions and other papers filed therein with  
 36 such clerk to the clerk of the circuit court of Kanawha  
 37 county. The proceeding shall thereafter be subject to the  
 38 jurisdiction of the Kanawha county circuit court and  
 39 conducted in the same manner as though it had been  
 40 commenced in the Kanawha county circuit court.

**§33-10-3. Commencement of delinquency proceedings.**

1 (a) The commissioner may file in the appropriate  
 2 circuit court of this state, as provided in section two of  
 3 this article, a petition alleging, with respect to a  
 4 domestic insurer:

5 (1) That there exists any grounds that would justify  
 6 a court order for a delinquency proceeding against an  
 7 insurer under this Act;

8 (2) That the interests of policyholders, creditors or the  
 9 public will be endangered by delay; and

10 (3) The contents of an order deemed necessary by the  
 11 commissioner.

12 (b) Upon a filing under subsection (a), the court may  
 13 issue forthwith, ex parte and without a hearing, the  
 14 requested order which shall direct the commissioner to  
 15 take possession and control of all or a part of the  
 16 property, books, accounts, documents, and other records  
 17 of an insurer, and of the premises occupied by it for  
 18 transaction of its business; and until further order of the  
 19 court enjoin the insurer and its officers, managers,  
 20 agents, and employees from disposition of its property  
 21 and from the transaction of its business except with the  
 22 written consent of the commissioner:

23 (c) The court shall specify in the order what its  
 24 duration shall be, which shall be such time as the court  
 25 deems necessary for the commissioner to ascertain the  
 26 condition of the insurer. On motion of either party or  
 27 on its own motion, the court may from time to time hold  
 28 such hearings as it deems desirable after such notice as  
 29 it deems appropriate, and may extend, shorten, or



30 modify the terms of the seizure order. The court shall  
31 vacate the seizure order if the commissioner fails to  
32 commence a delinquency proceeding under this article  
33 after having had a reasonable opportunity to do so. An  
34 order of the court pursuant to a formal proceeding  
35 under this article shall ipso facto vacate the seizure  
36 order.

37 (d) Entry of a seizure order under this section shall  
38 not constitute an anticipatory breach of any contract of  
39 the insurer.

40 (e) An insurer subject to an ex parte order under this  
41 section may petition the court at any time after the  
42 issuance of such order for a hearing and review of the  
43 order. The court shall hold such hearing and review not  
44 more than fifteen days after the request. Subject to the  
45 approval of the court, a hearing under this subsection  
46 may be held privately in chambers if the insurer  
47 proceeded against so requests.

48 (f) If, at any time after the issuance of such an order,  
49 it appears to the court that any person whose interest  
50 is or will be substantially affected by the order did not  
51 appear at the hearing and has not been served, the court  
52 may order that notice be given. An order that notice be  
53 given shall not stay the effect of any order previously  
54 issued by the court.

**§33-10-4. Injunctions or other orders.**

1 (a) Upon application by the commissioner for an order  
2 under this article:

3 (1) The court may without notice issue an injunction  
4 restraining the insurer, its officers, directors, stock-  
5 holders, members, subscribers, agents and all other  
6 persons from the transaction of its business or the waste  
7 or disposition of its property until the further order of  
8 the court.

9 (2) The court may at any time during a proceeding  
10 under this article issue such other injunctions or orders  
11 as may be deemed necessary to prevent interference  
12 with the commissioner or the proceeding, or waste of the  
13 assets of the insurer, or the commencement or prosecu-

14 tion of any actions, or the obtaining of preferences,  
15 judgments, attachments or other liens, or the making of  
16 any levy against the insurer or against its assets or any  
17 part thereof.

18 (3) The court may order any managing general agent  
19 or attorney in fact to release to the commissioner any  
20 books, records, accounts, documents or other writings  
21 relating to the business of such person: *Provided*, That  
22 any of the same or the property of such an agent or  
23 attorney shall be returned when no longer necessary to  
24 the commissioner or at any time the court after notice  
25 and hearing shall so direct.

26 (b) Any person having possession of and refusing to  
27 deliver any of the books, records, or assets of an insurer  
28 against whom a seizure order has been issued by the  
29 commissioner, shall be guilty of a misdemeanor and  
30 punishable by fine not exceeding one thousand dollars  
31 or imprisoned not more than one year, or both such fine  
32 and imprisonment.

33 (c) Whenever the commissioner makes any seizure as  
34 provided in section three, it shall, be the duty of the  
35 sheriff of any county of this state, and of the police  
36 department of any municipality therein, to furnish the  
37 commissioner, upon demand, with such deputies,  
38 patrolmen or officers as may be necessary to assist the  
39 commissioner in making and enforcing any such seizure.

40 (d) Notwithstanding any other provision of law, no  
41 bond shall be required of the commissioner as a  
42 prerequisite for the issuance of any injunction or  
43 restraining order pursuant to this section.

#### **§33-10-5. Grounds for rehabilitation of domestic insurers.**

1 The commissioner may apply to the court for an order  
2 appointing him as receiver of and directing him to  
3 rehabilitate a domestic insurer or the United States  
4 branch of an alien insurer having trusteed assets in this  
5 state, upon one or more of the following grounds. That  
6 the insurer:

7 (a) Is impaired or insolvent.

8 (b) Has refused to submit to reasonable examination  
9 by the commissioner, its property, books, records,  
10 accounts or affairs or those of any subsidiary or related  
11 company within the control of the insurer, or those of  
12 any person having executive authority in the insurer as  
13 far as they pertain to the insurer.

14 (c) Has failed to comply with an order of the commis-  
15 sioner to make good an impairment of capital or surplus  
16 or both.

17 (d) Has transferred or attempted to transfer substan-  
18 tially its entire property or business, or has entered into  
19 any transaction the effect of which is to merge substan-  
20 tially its entire property or business in that of any other  
21 insurer or other legal entity without having first  
22 obtained the written approval of the commissioner.

23 (e) Has willfully violated its charter, articles of  
24 incorporation, its by-laws, any law of this state or any  
25 valid order of the commissioner.

26 (f) Has an officer, director, or manager who has  
27 refused to be examined under oath concerning its  
28 affairs, for which purpose the commissioner is hereby  
29 authorized to conduct and to enforce by all appropriate  
30 and available means any such examination under oath  
31 in any other state or territory of the United States, in  
32 which any such officer, director, or manager may then  
33 presently be, to the full extent permitted by the laws of  
34 such other state or territory, this special authorization  
35 considered.

36 (g) Has been the subject of an application for the  
37 appointment of a receiver, trustee, custodian, or  
38 sequestrator of the insurer or its property otherwise  
39 than pursuant to the provisions of this chapter, but only  
40 if such appointment has been made or is imminent and  
41 its effect is or would be to oust the courts of this state  
42 of jurisdiction hereunder.

43 (h) Has consented to such an order through a majority  
44 of its directors, stockholders, members or subscribers.

45 (i) Has failed to pay a final judgment rendered against  
46 it in this state upon any insurance contract issued or

47 assumed by it, within thirty days after the judgment  
48 became final or within thirty days after the time for  
49 taking an appeal has expired or within thirty days after  
50 dismissal of an appeal before final determination,  
51 whichever date is the later.

**§33-10-7. Grounds for conserving assets of foreign insurers.**

1 The commissioner may apply to the court for an order  
2 appointing him as receiver or ancillary receiver, and  
3 directing him to conserve the assets within this state, of  
4 a foreign insurer upon any of the following grounds:

5 (a) Upon any of the grounds specified in sections five  
6 or six of this article, or

7 (b) Upon the ground that its property has been  
8 sequestrated in its domiciliary state or in any other  
state.

**§33-10-8. Grounds for conserving assets of alien insurers.**

1 The commissioner may apply to the court for an order  
2 appointing him as receiver or ancillary receiver, and  
3 directing him to conserve the assets within this state, of  
4 any alien insurer upon any of the following grounds:

5 (a) Upon any of the grounds specified in sections five  
6 or six of this article.

7 (b) Upon the ground that the insurer has failed to  
8 comply, within the time designated by the commis-  
9 sioner, with an order made by him to make good an  
10 impairment of its trustee funds, or

11 (c) Upon the ground that the property of the insurer  
12 has been sequestrated in a country other than the  
13 United States.

**§33-10-10. Order of rehabilitation.**

1 (a) An order to rehabilitate a domestic insurer or the  
2 United States branch of an alien insurer having trustee  
3 assets in this state shall direct the commissioner  
4 forthwith to take possession of the property of the  
5 insurer and to conduct the business thereof, and to take  
6 such steps toward removal of the causes and conditions

7    which have made rehabilitation necessary as the court  
8    may direct.

9       (b) If at any time the commissioner deems that further  
10    efforts to rehabilitate the insurer would be useless, he  
11    may apply to the court for an order of liquidation.

12    (c) The commissioner, or any interested person upon  
13    due notice to the commissioner, at any time may apply  
14    to the court for an order terminating the rehabilitation  
15    proceedings and permitting the insurer to resume  
16    possession of its property and the conduct of its business,  
17    but no such order shall be granted except when, after  
18    a full hearing, the court has determined that the  
19    purposes of the proceeding have been fully  
    accomplished.

**§33-10-14. Conduct of delinquency proceedings against  
domestic or alien insurers.**

1       (a) Whenever under this article a receiver is to be  
2    appointed in delinquency proceedings for a domestic or  
3    alien insurer, the court shall appoint the insurance  
4    commissioner as such receiver. The court shall order the  
5    commissioner forthwith to take possession of the assets  
6    of the insurer and to administer the same under the  
7    orders of the court.

8       (b) As domiciliary receiver, the commissioner shall be  
9    vested by operation of law with the title to all the  
10   property, contracts, and rights of action and all of the  
11   books and records of the insurer, wherever located, as  
12   of the date of entry of the order directing him to  
13   rehabilitate or liquidate a domestic insurer or to  
14   liquidate the United States branch of an alien insurer  
15   domiciled in this state and he shall have the right to  
16   recover the same and reduce the same to possession;  
17   except that ancillary receivers in reciprocal states shall  
18   have, as to assets located in their respective states, the  
19   rights and powers which are herein prescribed for  
20   ancillary receivers appointed in this state as to assets  
21   located in this state.

22    (c) The recording of a certified copy of the order  
23    directing possession to be taken in the office of the clerk

24 of the county court of the county where the proceedings  
25 are pending and in the office of the clerk of the county  
26 court of any county wherein the insurer has property or  
27 other assets, recorded in the same manner as deeds to  
28 real property are recorded, shall impart the same notice  
29 as would be imparted by a deed, bill of sale, or other  
30 evidence of title duly recorded or filed.

31 (d) The commissioner as domiciliary receiver shall be  
32 responsible for the proper administration of all assets  
33 coming into his possession or control. The court may at  
34 any time require a bond from him or his deputies if  
35 deemed desirable for the protection of such assets. The  
36 cost of such shall be paid out of the assets of the insurer  
37 as a cost of administration.

38 (e) Upon taking possession of the assets of an insurer,  
39 the domiciliary receiver shall, subject to the direction of  
40 the court, immediately proceed to conduct the business  
41 of the insurer or to take such steps as are authorized  
42 by this article for the purpose of rehabilitating,  
43 liquidating, or conserving the affairs or assets of the  
44 insurer.

45 (f) In connection with delinquency proceedings, the  
46 commissioner may appoint one or more special deputy  
47 commissioners of insurance to act for him and may  
48 employ such counsel, clerks, and assistants as he deems  
49 necessary. The compensation of the special deputies,  
50 counsel, clerks, or assistants and all expenses of taking  
51 possession of the insurer and of conducting the proceed-  
52 ings shall be fixed by the receiver, subject to the  
53 approval of the court, and shall be paid out of the funds  
54 or assets of the insurer. In the event the property of such  
55 person does not contain cash or liquid assets sufficient  
56 to defray the cost of the service required to be per-  
57 formed under the terms of this article, the commissioner  
58 may pay the cost of such services out of the commission-  
59 er's "Operating-Add'l. Fees" account. Any amount so  
60 paid shall be deemed expenses of administration and  
61 shall be repaid to said fund out of the first available  
62 moneys in the estate. Within the limits of duties imposed  
63 upon them, special deputies shall possess all the powers  
64 given to and, in the exercise of those powers, shall be

65 subject to all of the duties imposed upon the receiver  
66 with respect to such proceedings.

**§33-10-18. Proof of claims.**

1 (a) All claims against an insurer against which  
2 delinquency proceedings have begun shall set forth in  
3 reasonable detail the amount of the claim, or the basis  
4 upon which such amount can be ascertained, the facts  
5 upon which the claim is based, and the priorities  
6 asserted, if any. All such claims shall be verified by the  
7 affidavit of the claimant, or someone authorized to act  
8 on his behalf and having knowledge of the facts, and  
9 shall be supported by such documents as may be  
10 material thereto.

11 (b) All claims filed in this state shall be filed with the  
12 receiver, whether domiciliary or ancillary, in this state,  
13 on or before the last date for filing as specified in this  
14 article.

15 (c) When a claim is denied in whole or in part by the  
16 liquidator, written notice of the determination shall be  
17 given to the claimant or his attorney by first class mail  
18 at the address shown in the proof of claim. Within sixty  
19 days from the mailing of the notice, the claimant may  
20 file his objections with the liquidator. If no such filing  
21 is made, the claimant may not further object to the  
22 determination.

23 (d) Whenever objections are filed with the liquidator  
24 and the liquidator does not alter his denial of the claim  
25 as a result of the objections, the liquidator shall ask the  
26 court for a hearing as soon as practicable and give notice  
27 of the hearing by first class mail to the claimant or his  
28 attorney and to any other persons directly affected, not  
29 less than ten nor more than thirty days before the date  
30 of the hearing. The matter may be heard by the court  
31 or by a court-appointed referee who shall submit  
32 findings of fact along with his recommendation. Upon  
33 receipt of such report, the court shall fix a time for  
34 hearing the claim and shall direct that the claimant or  
35 the receiver, as the court shall specify, shall give such  
36 notice as the court shall determine to such persons as  
37 shall appear to the court to be interested therein. All

38 such notices shall specify the time and place of the  
39 hearing and shall concisely state the amount and nature  
40 of the claim, the priorities asserted, if any, and the  
41 recommendation of the receiver with reference thereto.

42 (e) At the hearing, all persons interested shall be  
43 entitled to appear and the court shall enter an order  
44 allowing, allowing in part, or disallowing the claim. Any  
45 such order shall be deemed to be an appealable order.

**§33-10-19a. Priority of distribution.**

1 The priority of distribution of claims from the  
2 insurer's estate shall be in accordance with the order in  
3 which each class of claims is herein set forth. Every  
4 claim in each class shall be paid in full or adequate  
5 funds retained for such payment before the members of  
6 the next class receive any payment. No subclasses shall  
7 be established within any class. No claim by a share-  
8 holder, policyholder or other creditor shall be permitted  
9 to circumvent the priority classes through the use of  
10 equitable remedies. The order of distribution shall be:

11 (a) Class I. The costs and expenses of administration,  
12 including, but not limited to, the following:

13 (1) The actual and necessary costs of preserving or  
14 recovering the assets of the insurer;

15 (2) Compensation for all services rendered in the  
16 liquidation;

17 (3) Any necessary filing fees;

18 (4) The fees and mileage payable to witnesses;

19 (5) Reasonable attorney's fees; and

20 (6) All expenses incurred by the department of  
21 insurance arising out of the enforcement of chapter  
22 thirty-three and its regulations.

23 (b) Class II. Debts due to employees for compensation  
24 under the provisions of section twenty-seven of this  
25 article.

26 (c) Class III. All claims for refund of unearned  
27 premiums under nonassessable policies and all claims of



28 policyholders including such claims of the federal or any  
29 state or local government for losses incurred and third  
30 party claims of an insolvent insurer and all reasonable  
31 claims of the West Virginia insurance guaranty associ-  
32 ations and associations or entities performing a similar  
33 function in other states.

34 (d) Class IV. Claims of general creditors including  
35 claims of ceding and assuming companies in their  
36 capacity as such.

37 (e) Class V. Claims of the federal or any state or local  
38 government. Claims, including those of any governmen-  
39 tal body for a penalty or forfeiture, shall be allowed in  
40 this class only to the extent of the pecuniary loss  
41 sustained from the act, transaction or proceeding out of  
42 which the penalty or forfeiture arose, with reasonable  
43 and actual costs occasioned thereby. The remainder of  
44 such claims shall be postponed to the class of claims  
45 under subdivision (h) of this section.

46 (f) Class VI. Claims filed late or any other claims other  
47 than claims under subdivisions (g) and (h) of this section.

48 (g) Class VII. Surplus or contribution notes, or similar  
49 obligations and premium refunds on assessable policies.  
50 Payments to members of domestic mutual insurance  
51 companies shall be limited in accordance with law.

52 (h) Class VIII. The claims of shareholders or other  
53 owners.

### **§33-10-21. Uniform Insurers Liquidation Act.**

1 (a) Paragraphs (b) to (m), inclusive, of section one of  
2 this article, together with sections four, and fourteen to  
3 twenty, inclusive, of this article constitute and may be  
4 referred to as the Uniform Insurers Liquidation Act.

5 (b) The Uniform Insurers Liquidation Act shall be so  
6 interpreted and construed as to effectuate its general  
7 purpose to make uniform the law of those states that  
8 enact it. To the extent that its provisions when appli-  
9 cable conflict with other provisions of this article the  
10 provisions of such act shall control.

### **§33-10-29. Allowance of certain claims.**

1 (a) No contingent claim shall share in a distribution  
2 of the assets of an insurer which has been adjudicated  
3 to be insolvent by an order made pursuant to this article,  
4 except that such claim shall be considered, if properly  
5 presented, and may be allowed to share where:

6 (1) It does not prejudice the orderly administration of  
7 the liquidation, or

8 (2) There is a surplus and the liquidation is thereafter  
9 conducted upon the basis that such insurer is solvent.

10 (b) Where an insurer has been so adjudicated to be  
11 insolvent any person who has a cause of action against  
12 an insured of such insurer under a liability insurance  
13 policy issued by such insurer shall have the right to file  
14 a claim in the liquidation proceeding, regardless of the  
15 fact that such claim may be contingent, and such claim  
16 may be allowed:

17 (1) If it may be reasonably inferred from the proof  
18 presented upon such claim that such person would be  
19 able to obtain a judgment upon such cause of action  
20 against such insured, and

21 (2) If such person shall furnish suitable proof, unless  
22 the court for good cause shown shall otherwise direct,  
23 that no further valid claim against such insurer arising  
24 out of his cause of action other than those already  
25 presented can be made, and

26 (3) If the total liability of such insurer to all claimants  
27 arising out of the same act of its insured shall be no  
28 greater than its maximum liability would be were it not  
29 in liquidation.

30 (c) No judgment against such an insured taken after  
31 the date of entry of the liquidation order shall be  
32 considered in the liquidation proceedings as evidence of  
33 liability, or of the amount of damages, and no judgment  
34 against an insured taken by default or by collusion prior  
35 to the entry of the liquidation order shall be considered  
36 as conclusive evidence in the liquidation proceedings,  
37 either of the liability of such insured to such person upon  
38 such cause of action or of the amount of damages to  
39 which such person is therein entitled.

40 (1) A claim by a third party founded upon an  
41 insurance policy may be allowed without requiring such  
42 claim to be reduced to judgment, provided it can be  
43 reasonably inferred from the proof presented that the  
44 claimant would be able to obtain a judgment upon his  
45 cause of action against the insured and that such  
46 judgment would represent a liability of the insurer in  
47 liquidation under the policy of insurance upon which  
48 such claim is founded.

49 (d) No claim of any secured claimant shall be allowed  
50 at a sum greater than the difference between the value  
51 of the claim without security and the value of the  
52 security itself as of the date of the entry of the order  
53 of liquidation or such other date set by the court for  
54 determining rights and liabilities as provided in section  
55 twenty-five of this article unless the claimant shall  
56 surrender his security to the commissioner, in which  
57 event the claim shall be allowed in the full amount for  
58 which it is valued.

59 (e) Whenever a creditor whose claim against an  
60 insurer is secured, in whole or in part, by the under-  
61 taking of another person, fails to prove and file that  
62 claim; the other person may do so in the creditor's name,  
63 and shall be subrogated to the rights of the creditor,  
64 whether the claim has been filed by the creditor or by  
65 the other person in the creditor's name, to the extent  
66 that he discharges the undertaking. In the absence of  
67 an agreement with the creditor to the contrary, the  
68 other person shall not be entitled to any distribution:  
69 however, until the amount paid to the creditor on the  
70 undertaking plus the distributions paid on the claim  
71 from the insurer's estate to the creditor equals the  
72 amount of the entire claim of the creditor. Any excess  
73 received by the creditor shall be held by him in trust  
74 for such other person, the term "other person", as used  
75 in this section is not intended to apply to a guaranty  
76 association or foreign guaranty association.

77 (f) Unless such claim is filed in the manner and within  
78 the time provided in section eighteen, it shall not be  
79 entitled to filing or allowance, and no action may by  
80 maintained thereon. In the liquidation, pursuant to the

81 provisions of this article, of any domestic insurer which  
82 has issued policies insuring the lives of persons, the  
83 commissioner shall, within thirty days after the last day  
84 set for the filing of claims, make a list of the persons  
85 who have not filed proofs of claim with him and to  
86 whom, according to the books of said insurer, there are  
87 amounts owing under such policies, and he shall set  
88 opposite the name of each such person the amount so  
89 owing to such person. Each person whose name shall  
90 appear upon said list shall be deemed to have duly filed,  
91 prior to the last day set for the filing of claims, a claim  
92 for the amount set opposite his name on said list.

93 (g) Claims founded upon unliquidated or undeter-  
94 mined demands must be filed within the time limit  
95 provided in this article for the filing of claims, but  
96 claims founded upon such demands shall not share in  
97 any distribution to creditors of a person proceeded  
98 against under section nineteen-a, until such claims have  
99 been definitely determined, proved and allowed.  
100 Thereafter, such claims shall share ratably with other  
101 claims of the same class in all subsequent distributions.

102 (1) An unliquidated or undetermined claim or demand  
103 within the meaning of this article shall be deemed to be  
104 any such claim or demand upon which a right of action  
105 has accrued at the date of the order of liquidation and  
106 upon which the liability has not been determined or the  
107 amount thereof liquidated.

108 (h) The commissioner may require, as a condition of  
109 payment of the final liquidation dividend to a lender, or  
110 his assignee, who has filed a claim for an unearned  
111 premium as an assignee of the insured for valuable  
112 consideration:

113 (1) That such assignee of the insured shall assign to  
114 the liquidator all his right, title, and interest in any  
115 unsatisfied debt of the insured to such assignee,  
116 pertaining to policies of the insolvent insurer, remaining  
117 unpaid after crediting the final liquidation dividend, if  
118 the amount of such unsatisfied debt is less than one  
119 hundred dollars and one cent.

120 (A) That all of the documents giving rise to such debt

121 be delivered to him or her.

122 (i) The commissioner may determine whether or not  
123 it will be feasible to attempt to collect any such assigned  
124 debt. If he determines not to pursue collection of any  
125 such debt, he shall file a declaration to that effect with  
126 the liquidation court and be relieved of any further  
127 responsibility in respect to such debt.

128 (j) As used in this section, "insured" means a natural  
129 person who purchased insurance from the insolvent  
130 insurer for personal, family, or household purposes.

**§33-10-36. Creating preference among creditors; disbursement of assets.**

1 (a) Within one hundred twenty days of a final  
2 determination of insolvency of an insurance company by  
3 the circuit court, the commissioner shall make applica-  
4 tion to the court for approval of a proposal to disperse  
5 assets out of such company's marshaled assets, from  
6 time to time as such assets become available, to the West  
7 Virginia insurance guaranty association and any similar  
8 organization performing a similar function in another  
9 state. The West Virginia insurance guaranty association  
10 and any entity or person performing a similar function  
11 in other states shall hereinafter be referred to collec-  
12 tively as the associations. If the commissioner deter-  
13 mines that there are insufficient assets to disburse, the  
14 application required by this section shall be satisfied by  
15 a filing by the commissioner stating the reasons for this  
16 determination.

17 (b) Such proposal shall at least include provisions for:

18 (1) Reserving amounts for the payment of expenses of  
19 administration and of claims falling within the priori-  
20 ties established in the Uniform Insurers Liquidation Act  
21 but only with respect to such priorities higher than that  
22 of the associations;

23 (2) Disbursement of the assets marshaled to date and  
24 subsequent disbursement of assets as they become  
25 available;

26 (3) Equitable allocation of disbursements to each of

27 the associations entitled thereto;

28 (4) The securing by the commissioner from each of the  
 29 associations entitled to disbursements pursuant to this  
 30 section of an agreement to return to the commissioner  
 31 such assets, together with income earned on assets  
 32 previously disbursed, as may be required to pay claims  
 33 of secured creditors and claims falling within the  
 34 priorities established in section twenty-seven of this  
 35 article. No bond shall be required of any such associ-  
 36 ation; and

37 (5) A full report to be made by the association to the  
 38 commissioner accounting for all assets so dispersed to  
 39 the association, all disbursements made therefrom, any  
 40 interest earned by the association on such assets and any  
 41 other matter as the court may direct.

42 (c) The commissioner's proposal shall provide for  
 43 disbursements to the associations in amounts estimated  
 44 at least equal to the claim payments made or to be made  
 45 thereby for which such associations could assert a claim  
 46 against the commissioner, and shall further provide that  
 47 if the assets available for disbursement from time to  
 48 time do not equal or exceed the amount of such claim  
 49 payments made or to be made by the association, then  
 50 disbursements shall be in the amount of available assets.

51 (d) Notice of such application shall be given to the  
 52 associations in and to the commissioners of insurance of  
 53 each of the states. Any such notice shall be deemed to  
 54 have been given when deposited in the United States  
 55 mail, first class postage prepaid, at least thirty days  
 56 prior to submission of such application to the court.  
 57 Action on the application may be taken by the court  
 58 provided the above required notice has been given and  
 59 provided that the commissioner's proposal complies with  
 60 paragraphs (1) and (2), subdivision (b) hereof.

**§33-10-37. Distribution of assets.**

1 Under the direction of court, the liquidator shall pay  
 2 distributions in a manner that will assure the proper  
 3 recognition of priorities and a reasonable balance  
 4 between the expeditious completion of the liquidation

5 and the protection of unliquidated and undetermined  
6 claims, including third party claims. Distribution of  
7 assets in kind may be made at valuations set by  
8 agreement between the liquidator and the creditor and  
9 approved by the court.

**§33-10-38. Unclaimed and withheld funds.**

1 All unclaimed funds subject to distribution remaining  
2 in the liquidator's hands when he is ready to apply to  
3 the court for discharge, including the amount distrib-  
4 utable to any creditor, shareholder, member or other  
5 person who is unknown or cannot be found, shall be  
6 deposited with the state treasurer, and shall be paid  
7 without interest to the person entitled thereto or his  
8 legal representative upon proof satisfactory to the state  
9 treasurer of his right thereto. Any amount on deposit not  
10 claimed within six years from the discharge of the  
11 liquidator shall be deemed to have been abandoned and  
12 shall be escheated to the State of West Virginia without  
13 formal escheat proceedings and be deposited with the  
14 general fund.

**§33-10-39. Immunity in receivership proceedings and  
representation of the special deputy  
supervisor.**

1 (a) No claim of any nature whatsoever that is directly  
2 related to the receivership of an insurer shall arise  
3 against, and no liability shall be imposed upon, the  
4 insurance commissioner, deputy commissioner, special  
5 deputy supervisor, or any person or entity acting as a  
6 receiver of an insurer, including surety, in rehabilita-  
7 tion, liquidation, or conservation as a result of a court  
8 order issued on or after the effective date of this article  
9 for any statement made or actions taken or not taken  
10 in the good faith exercise of their powers under law.  
11 However, this immunity shall not extend to acts or  
12 omissions which are malicious or grossly negligent. This  
13 qualified immunity extends to agents and employees of  
14 the receiver.

15 (b) In any civil proceeding filed against a special  
16 deputy supervisor appointed pursuant to this article, the  
17 special deputy supervisor shall be entitled to be

18 represented by the attorney general.

**ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.**

**§33-22-2. Applicability of other provisions.**

1 Each company to the same extent such provisions are  
 2 applicable to domestic mutual insurers shall be gov-  
 3 erned by and be subject to the following articles of this  
 4 chapter: Article one (definitions), article two (insurance  
 5 commissioner), article four (general provisions) except  
 6 that section sixteen of article four shall not be applicable  
 7 thereto, article ten (rehabilitation and liquidation)  
 8 except that under the provisions of section thirty-two of  
 9 said article ten no assessment shall be levied against any  
 10 former member of a farmers' mutual fire insurance  
 11 company who is no longer a member of the company at  
 12 the time the order to show cause was issued, article  
 13 eleven (unfair practices and frauds), article twelve  
 14 (agents, brokers and solicitors) except that the agents'  
 15 license fee shall be five dollars, article twenty-six (West  
 16 Virginia Insurance Guaranty Association Act), article  
 17 thirty (mine subsidence insurance) except that under the  
 18 provisions of section six, article thirty, a farmers'  
 19 mutual insurance company shall have the option of  
 20 offering mine subsidence coverage to all of its policy-  
 21 holders but shall not be required to do so, article thirty-  
 22 three (annual audited financial report); and article  
 23 thirty-four (administrative supervision); but only to the  
 24 extent these provisions are not inconsistent with the  
 25 provisions of this article.

**ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.**

**§33-23-2. Applicability of other provisions.**

1 Every fraternal benefit society shall be governed and  
 2 be subject, to the same extent as other insurers  
 3 transacting like kinds of insurance, to the following  
 4 articles of this chapter: Article one (definitions), article  
 5 two (insurance commissioner), article four (general  
 6 provisions), article six, section thirty (fee for form and  
 7 rate filing), article ten (rehabilitation and liquidation),  
 8 article eleven (unfair trade practices), article twelve  
 9 (agents, brokers, solicitors and excess lines), article



10 thirteen (life insurance), article fifteen-a (long-term care  
11 insurance), article thirty-three (annual audited financial  
12 report) and article thirty-four (administrative supervi-  
13 sion).

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL  
SERVICE CORPORATIONS, DENTAL SERVICE  
CORPORATIONS AND HEALTH SERVICE  
CORPORATIONS.

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

1 Every such corporation is hereby declared to be a  
2 scientific, nonprofit institution and as such exempt from  
3 the payment of all property and other taxes. Every such  
4 corporation, to the same extent such provisions are  
5 applicable to insurers transacting similar kinds of  
6 insurance and not inconsistent with the provisions of this  
7 article, shall be governed by and be subject to the  
8 provisions as hereinbelow indicated, of the following  
9 articles of this chapter: Article two (insurance commis-  
10 sioner) except that under section nine of article two  
11 examinations shall be conducted at least once every four  
12 years, article four (general provisions) except that  
13 section sixteen of article four shall not be applicable  
14 thereto, article six, section thirty-four (fee for form and  
15 rate filing), article ten (rehabilitation and liquidation),  
16 article eleven (unfair practices and frauds), article  
17 twelve (agents, brokers and solicitors) except that the  
18 agent's license fee shall be five dollars, article fifteen-  
19 a (long-term care insurance), section three-c, article  
20 sixteen (group accident and sickness insurance), section  
21 three-d, article sixteen (medicare supplement), section  
22 three-f, article sixteen (treatment of temporomandibular  
23 joint disorder and craniomandibular disorder), article  
24 twenty-eight (individual accident and sickness insurance  
25 minimum standards), article thirty-three (annual  
26 audited financial report) and article thirty-four (admi-  
27 nistrative supervision); and no other provision of this  
28 chapter shall apply to such corporations unless specif-  
29 ically made applicable by the provisions of this article.  
30 If, however, any such corporation shall be converted into  
31 a corporation organized for a pecuniary profit, or if it  
32 shall transact business without having obtained a license

Three - a, article  
(mental illness),  
A  
K/Bmb

33 as required by section five of this article, it shall  
34 thereupon forfeit its right to these exemptions.

**§33-24-14. Definitions.**

1 For the purpose of sections fourteen through forty-six  
2 of this article.

3 (a) "Impairment" or "insolvency". A corporation shall  
4 be deemed to be impaired and the corporation shall be  
5 deemed to be insolvent, when such corporation shall not  
6 be possessed of assets at least equal to all liabilities and  
7 required reserves.

8 (b) "Corporation" shall be defined in section two of this  
9 article.

10 (c) "Delinquency proceeding" means any proceeding  
11 commenced against a corporation pursuant to this  
12 article for the purpose of liquidating, rehabilitating,  
13 supervising, reorganizing or conserving such  
14 corporation.

15 (d) "State" means any state, district or territory of the  
16 United States.

17 (e) "Foreign country" means any other jurisdiction not  
18 in any state.

19 (f) "Domiciliary state" means the state of West  
20 Virginia for any corporation.

21 (g) "Ancillary state" means any state other than West  
22 Virginia.

23 (h) "Reciprocal state" means any state other than this  
24 state in which in substance and effect the provisions of  
25 the Uniform Insurers Liquidation Act, as defined in  
26 section twenty-one of article ten of chapter thirty-three,  
27 are in force, including the provisions requiring that the  
28 Insurance Commissioner or equivalent insurance super-  
29 visory official be the receiver of a delinquent insurer.

30 (i) "General assets" means all property, real, personal  
31 or otherwise, not specifically mortgaged, pledged,  
32 deposited or otherwise encumbered for the security or  
33 benefit of specified persons or a limited class or classes  
34 of persons, and as to such specifically encumbered

35 property the term includes all such property or its  
36 proceeds in excess of the amount necessary to discharge  
37 the sum or sums secured thereby. Assets held in trust  
38 and assets held on deposit for the security of benefit of  
39 all policy holders or all policy holders and creditors in  
40 more than a single state shall be deemed general assets.

41 (j) "Preferred claim" means any claim with respect to  
42 which the terms of this article accord priority of  
43 payments from the general assets of the insurer.

44 (k) "Special deposit claim" means any claim secured  
45 by a deposit made pursuant to statute for the security  
46 or benefit of a limited class or classes of persons, but  
47 not including any general assets.

48 (l) "Secured claim" means any claim secured by  
49 mortgage, trust, deed, pledge, deposit as security,  
50 escrow, or otherwise, but not including special deposit  
51 claim or claims against general assets. The term also  
52 includes claims which more than four months prior to  
53 the commencement of delinquency proceedings have  
54 become liens upon specific assets by reason of judicial  
55 process.

56 (m) "Receiver" means receiver, liquidator, rehabilita-  
57 tor, supervisor or conservator as the context may  
58 require.

**§33-24-15. Jurisdiction, venue and appeal of delinquency  
proceedings; exclusive remedy.**

1 (a) The circuit courts of this state or the judges thereof  
2 in vacation are vested with exclusive original jurisdic-  
3 tion of delinquency proceedings under this article, and  
4 are authorized to make all necessary and proper orders  
5 to carry out the purposes of this article.

6 (b) The venue of delinquency proceedings against a  
7 corporation shall be in the circuit court of the county  
8 of the corporation's principal place of business.

9 (c) Delinquency proceedings pursuant to this article  
10 shall constitute the sole and exclusive method of  
11 liquidating, rehabilitating, supervising, reorganizing or  
12 conserving a corporation, and no court shall entertain

13 a petition for the commencement of such proceedings  
14 unless the same has been filed in the name of the state  
15 on the relation of the insurance commissioner.

16 (d) An appeal shall lie to the supreme court of appeals  
17 from an order granting or refusing rehabilitation,  
18 liquidation, supervision or conservation, and from every  
19 other order in delinquency proceedings having the  
20 character of a final order as to the particular portion  
21 of the proceedings embraced therein.

22 (e) At any time after an order is made under section  
23 sixteen or seventeen of this article the commissioner  
24 may remove the principal office of the corporation  
25 proceeded against to Kanawha County. In the event of  
26 such removal, the court wherein the proceeding was  
27 originally commenced shall, upon the application of the  
28 commissioner, direct its clerk to transmit all the  
29 pleadings, motions and other papers filed therein with  
30 such clerk to the clerk of the circuit court of Kanawha  
31 county. The proceeding shall thereafter be subject to the  
32 jurisdiction of the Kanawha County circuit court and  
33 conducted in the same manner as though it had been  
34 commenced in the Kanawha County circuit court.

**§33-24-16. Commencement of delinquency proceedings.**

1 The insurance commissioner shall commence any such  
2 proceeding by an application to the court for an order  
3 directing the corporation to show cause why the  
4 commissioner should not have the relief prayed for. On  
5 the return of such order to show cause, and after a full  
6 hearing, the court, after consideration of the best  
7 interest of the insurer, policyholders, members, sub-  
8 scribers, creditors and the public, shall either deny the  
9 application or, upon a finding that there exists any  
10 ground set forth in this article for a delinquency  
11 proceeding and a finding that the relief prayed for by  
12 the commissioner is necessary, grant the application,  
13 together with such other relief as the nature of the case  
14 and the interest of policyholders, creditors, stockholders,  
15 members, subscribers, or the public require.

**§33-24-17. Ex parte orders, injunctions and other orders.**

1 (a) The commissioner may file in the appropriate  
2 circuit court of this state a petition for an ex parte order  
3 alleging, with respect to a corporation:

4 (1) That there exists any ground that would justify an  
5 application for a court order for a delinquency proceed-  
6 ing against a corporation under this article;

7 (2) That there exist sufficient exigent circumstances  
8 for an order to be issued without prior notice to the  
9 corporation and that the interests of policyholders,  
10 creditors or the public will be significantly endangered  
11 by delay or prior notice to the corporation; and

12 (3) The contents of a proposed order deemed necessary  
13 by the commissioner.

14 (b) Upon a filing under subsection (a), the court may  
15 issue forthwith, ex parte and without a hearing, the  
16 requested order, with such modifications as the court  
17 may deem necessary and appropriate, which shall direct  
18 the commissioner to take possession and control of all  
19 or a part of the property, books, accounts, documents,  
20 and other records of a corporation, and of the premises  
21 occupied by it for transaction of its business, and until  
22 further order of the court enjoin the corporation and its  
23 officers, managers, agents and employees from disposi-  
24 tion of its property and from the transaction of its  
25 business except with the written consent of the  
26 commissioner.

27 (c) The court shall specify in the order what its  
28 duration shall be, which shall be such time as the court  
29 deems necessary for the commissioner to ascertain the  
30 condition of the corporation. On motion of either party  
31 or on its own motion, the court may from time to time  
32 hold such hearings as it deems desirable after such  
33 notice as it deems appropriate, and may extend, shorten,  
34 or modify the terms of the order. The court shall vacate  
35 the seizure order if the commissioner fails to commence  
36 a delinquency proceeding under this article within a  
37 reasonable time after entry of the ex parte order or the  
38 conclusion of any hearing held pursuant to subsection (e)  
39 whichever is later. An order of the court pursuant to a  
40 formal proceeding under this article shall ipso facto

41 vacate the order.

42 (d) Entry of an order under this section shall not  
43 constitute an anticipatory breach of any contract of the  
44 corporation.

45 (e) A corporation subject to an ex parte order under  
46 this section may petition the court at any time after the  
47 issuance of such order for a hearing and review of the  
48 order. The court shall hold such hearing and review not  
49 more than fifteen days after the request. Subject to the  
50 approval of the court, a hearing under this subsection  
51 may be held privately in chambers if the corporation  
52 proceeded against so requests.

53 (f) If, at any time after the issuance of such an order,  
54 it appears to the court that any person whose interest  
55 is or will be substantially affected by the order did not  
56 appear at the hearing and has not been served, the court  
57 may order that notice be given. An order that notice be  
58 given shall not stay the effect of any order previously  
59 issued by the court.

60 (g) Upon application by the commissioner for an order  
61 under this article, or at any time thereafter:

62 (1) The court may without notice issue an injunction  
63 restraining the corporation, its officers, directors,  
64 members, subscribers, agents and all other persons from  
65 the transaction of its business or the waste or disposition  
66 of its property until the further order of the court.

67 The court may at any time during a proceeding under  
68 this article issue such other injunctions or orders as may  
69 be deemed necessary to prevent interference with the  
70 commissioner or the proceeding, or waste of the assets  
71 of the corporation, or the commencement or prosecution  
72 of any actions, or the obtaining of preferences, judg-  
73 ments, attachments or other liens, or the making of any  
74 levy against the insurer or against its assets or any part  
75 thereof.

76 (3) The court may order any managing general agent  
77 or attorney in fact to release to the commissioner any  
78 books, records, accounts, documents or other writing  
79 relating to the business of such person: *Provided*, That

80 any of the same or the property of such an agent or  
81 attorney shall be returned when no longer necessary to  
82 the commissioner or at any time the court after notice  
83 and hearing shall so direct.

84 (h) Any person having possession of and refusing to  
85 deliver any of the books, records, or assets of a  
86 corporation against whom a seizure order has been  
87 issued by the commissioner, shall be guilty of a  
88 misdemeanor and punishable by fine not exceeding one  
89 thousand dollars or imprisonment not exceeding one  
90 year, or both such fine and imprisonment.

91 (i) Whenever the commissioner makes any seizures as  
92 provided in this article, it shall, on the demand of the  
93 commissioner, be the duty of the sheriff of any county  
94 of this state, and of the police department of any  
95 municipality therein, to furnish him with such deputies,  
96 patrolmen or officers as may be necessary to assist the  
97 commissioner in making and enforcing any such seizure.

98 (j) Notwithstanding any other provision of law, no  
99 bond shall be required of the commissioner as a  
100 prerequisite for the issuance of any injunction or  
101 restraining order pursuant to this section.

**§33-24-18. Grounds for rehabilitation of a corporation.**

1 The commissioner may apply to the court for an order  
2 appointing him as receiver of and directing him to  
3 rehabilitate a corporation upon one or more of the  
4 following grounds. That the corporation:

5 (a) Is impaired or insolvent.

6 (b) Has refused to submit to reasonable examination  
7 by the commissioner its property, books, records,  
8 accounts or affairs or those of any subsidiary or related  
9 company within the control of the insurer, or those of  
10 any person having executive authority in the corporation  
11 as far as they pertain to the corporation;

12 (c) Has failed to comply with an order of the commis-  
13 sioner to make good an impairment of surplus.

14 (d) Has transferred or attempted to transfer substan-  
15 tially its entire property or business, or has entered into

16 any transaction the effect of which is to merge substan-  
 17 tially its entire property or business in that of any other  
 18 corporation or other legal entity without having first  
 19 obtained the written approval of the commissioner.

20 (e) Has willfully violated its charter, articles of  
 21 incorporation, its bylaws, or any law of this state or any  
 22 valid order of the commissioner.

23 (f) Has an officer, director, or manager who has  
 24 refused to be examined under oath concerning its  
 25 affairs, for which purpose the commissioner is hereby  
 26 authorized to conduct and to enforce by all appropriate  
 27 and available means any such examination under oath  
 28 in any other state or territory of the United States, in  
 29 which any such officer, director, or manager may then  
 30 presently be, to the full extent permitted by the laws of  
 31 such other state or territory, this special authorization  
 32 considered.

33 (g) Has been the subject of an application for the  
 34 appointment of a receiver, trustee, custodian, or  
 35 sequestrator of the corporation or its property otherwise  
 36 than pursuant to the provisions of this chapter, but only  
 37 if such appointment has been made or is imminent and  
 38 its effect is or would be to oust the courts of this state  
 39 of jurisdiction hereunder.

40 (h) Has consented to such an order through a majority  
 41 of its directors, stockholders, members or subscribers.

42 (i) Has failed to pay a final judgment rendered against  
 43 it in this state upon any insurance contract issued or  
 44 assumed by it, within thirty days after the judgment  
 45 became final or within thirty days after the time for  
 46 taking an appeal has expired or within thirty days after  
 47 dismissal of an appeal before final determination,  
 48 whichever date is the later.

### §33-24-19. Grounds for liquidation.

1 The commissioner may apply to the court for an order  
 2 appointing him as a receiver (if his appointment as  
 3 receiver shall not be then in effect) and directing him  
 4 to liquidate the business of such corporation regardless  
 5 of whether or not there has been a prior order directing



6 him to rehabilitate such corporation, upon any of the  
7 grounds specified in this article, or if such corporation:

8 (a) Has ceased transacting business for a period of one  
9 year, or

10 (b) Is an insolvent corporation and has commenced  
11 voluntary liquidation or dissolution, or attempts to  
12 commence or prosecute any action or proceeding to  
13 liquidate its business or affairs, or to dissolve its  
14 corporate charter, or to procure the appointment of a  
15 receiver, trustee, custodian, or sequestrator under any  
16 law except this chapter.

**§33-24-20. Grounds for administrative supervision.**

1 (a) Whenever the commissioner has reasonable cause  
2 to believe, and determines after a hearing held under  
3 subsection (e) of this section, that any such corporation  
4 has committed or engaged in, or is about to commit or  
5 engage in, any act, practice, or transaction that would  
6 subject it to delinquency proceedings under this article,  
7 he may make and serve upon such corporation and any  
8 other persons involved, such orders as are reasonably  
9 necessary to correct, eliminate or remedy such conduct,  
10 condition or ground.

11 (b) If upon examination or at any other time the  
12 commissioner has reasonable cause to believe that such  
13 corporation is in such condition as to render the  
14 continuance of its business hazardous to the public or  
15 to holders of its policies or certificates of insurance, or  
16 if such corporation gives its consent, then the commis-  
17 sioner shall upon his determination:

18 (1) Notify such corporation of his determination; and

19 (2) Furnish to the insurer a written list of the  
20 commissioner's requirements to abate his determination;  
21 or

22 (3) File an application with the court for an order of  
23 administrative supervision pursuant to sections sixteen  
24 and seventeen of this article.

25 (c) Upon the issuance of a court order of administra-  
26 tive supervision to the commissioner, the commissioner

27 may appoint a supervisor to supervise such corporation.  
 28 The order appointing a supervisor shall direct the  
 29 supervisor to enforce orders issued by the court including  
 30 orders requiring that such corporation may not do any  
 31 of the following things during the period of supervision,  
 32 without the prior approval of the commissioner or his  
 33 supervisor:

34 (1) Dispose of, convey or encumber any of its assets  
 35 or its business in force;

36 (2) Withdraw from any of its bank accounts;

37 (3) Lend any of its funds;

38 (4) Invest any of its funds;

39 (5) Transfer any of its property;

40 (6) Incur any debt, obligation or liability;

41 (7) Merge or consolidate with any company;

42 (8) Enter into any new reinsurance contract or treaty.

43 (9) Approve new premiums or renew any policies;

44 (10) Terminate, surrender, forfeit, convert or lapse  
 45 any insurance policy, certificate or contract, except for  
 46 nonpayment of premiums due;

47 (11) Release, pay or refund premium deposits, accrued  
 48 cash or loan values, unearned premiums, or other  
 49 reserves on any insurance policy, certificate or contract;

50 (12) Make any material change in management; or

51 (13) Increase salaries and benefits of officers or  
 52 directors or the preferential payment of bonuses,  
 53 dividends, or other payments deemed preferential.

54 (d) Any such corporation subject to an order under  
 55 this section shall comply with the lawful requirements  
 56 of the commissioner and, if placed under supervision,  
 57 shall have sixty days from the date the supervision order  
 58 is served within which to comply with the requirements  
 59 of the commissioner. In the event of such corporation's  
 60 failure to comply within such times, the commissioner  
 61 may institute proceedings under section sixteen of this

62 article to have a rehabilitator or liquidator appointed,  
63 or extend the period of supervision.

64 (e) The notice of hearing under subsection (a) and any  
65 order issued pursuant to such subsection shall be served  
66 upon the insurer pursuant to the applicable rules of civil  
67 or administrative procedure. The notice of hearing shall  
68 state the time and place of hearing, and the conduct,  
69 condition or ground upon which the commissioner would  
70 base his order. Unless mutually agreed between the  
71 commissioner and the insurer, the hearing shall occur  
72 not less than ten days nor more than thirty days after  
73 the notice is served and shall be either in Kanawha  
74 County or in some other place convenient to the parties  
75 to be designated by the commissioner. The commissioner  
76 shall hold all hearings under subsection (a) privately  
77 unless the insurer requests a public hearing, in which  
78 case the hearing shall be public. Any order issued by  
79 the commissioner under subsection (a) shall be subject  
80 to immediate review by the appropriate circuit court  
81 upon application by the corporation or any party whose  
82 interests are substantially affected thereby.

83 (f) If any person has violated any supervision order  
84 issued under this section which as to him was then still  
85 in effect, he shall be liable to pay a civil penalty imposed  
86 by the circuit court not to exceed ten thousand dollars:  
87 *Provided, That, the provisions of this subsection shall*  
88 *not apply to the commissioner, his employees or the*  
89 *supervisor.*

90 (g) The commissioner may, at any time, pursuant to  
91 section sixteen or seventeen of this article, apply to the  
92 court which issued the order of administrative supervi-  
93 sion for such orders as may reasonably be necessary and  
94 proper to enforce its orders of supervision, including,  
95 but not limited to, restraining orders, preliminary  
96 injunctions and permanent injunctions.

97 (h) In the event that any person, subject to the  
98 provisions of this article, including officers, managers,  
99 directors, trustees, owners, employees or agents or any  
100 person with authority over or in charge of the corpora-  
101 tion's affairs, shall knowingly violate any valid order of

102 the commissioner issued under the provisions of this  
 103 section and, as a result of such violation, the net worth  
 104 of the corporation shall be reduced or the corporation  
 105 shall suffer loss it would otherwise have suffered, said  
 106 person shall become personally liable to the corporation  
 107 for the amount of any such reduction or loss. The  
 108 commissioner or supervisor is authorized to bring an  
 109 action on behalf of the corporation in the circuit court  
 110 to recover the amount of the reduction or loss together  
 111 with any costs.

**§33-24-21. Order of rehabilitation.**

1 (a) An order to rehabilitate a corporation shall direct  
 2 the commissioner forthwith to take possession of the  
 3 property of the corporation and to conduct the business  
 4 thereof, and to take such steps toward removal of the  
 5 causes and conditions which have made rehabilitation  
 6 necessary as the court may direct.

7 (b) If at any time the commissioner deems that further  
 8 efforts to rehabilitate the corporation would be useless,  
 9 he may apply to the court for an order of liquidation.

10 (c) The commissioner, or any interested person upon  
 11 due notice to the commissioner, at any time may apply  
 12 to the court for an order terminating the rehabilitation  
 13 proceedings and permitting the corporation to resume  
 14 possession of its property and the conduct of its business,  
 15 but no such order shall be granted except when, after  
 16 a full hearing, the court has determined that the  
 17 purposes of the proceedings have been fully accom-  
 18 plished.

**§33-24-22. Order of liquidation of corporation.**

1 (a) An order to liquidate the business of a corporation  
 2 shall direct the commissioner forthwith to take posses-  
 3 sion of the property of the corporation, to liquidate its  
 4 business, to deal with the corporation's property and  
 5 business in his own name as insurance commissioner or  
 6 in the name of the corporation, as the court may direct,  
 7 and to give notice to all creditors who may have claims  
 8 against the corporation to present such claims.

9 (b) The commissioner may apply for and secure an

10 order dissolving the corporate existence of a corporation  
11 upon his application for an order of liquidation of such  
12 corporation or at any time after such order has been  
13 granted.

**§33-24-23. Conduct of delinquency proceedings against a corporation.**

1 (a) Whenever under this article a receiver is to be  
2 appointed in delinquency proceedings for a corporation,  
3 the court shall appoint the insurance commissioner as  
4 such receiver. The court shall order the commissioner  
5 forthwith to take possession of the assets of the corpo-  
6 ration and to administer the same under the orders of  
7 the court.

8 (b) As domiciliary receiver, the commissioner shall be  
9 vested by operation of law with the title to all the  
10 property, contracts, and rights of action and all of the  
11 books and records of the corporation, wherever located,  
12 as of the date of entry of the order directing him to  
13 rehabilitate or liquidate a corporation and he shall have  
14 the right to recover the same and reduce the same to  
15 possession; except ancillary receivers in reciprocal states  
16 shall have, as to assets located in their respective states,  
17 the rights and powers which are herein prescribed for  
18 ancillary receivers appointed in this state as to assets  
19 located in this state.

20 (c) The recording of a certified copy of the order  
21 directing possession to be taken in the office of the clerk  
22 of the county court of the county where the proceedings  
23 are pending and in the office of the clerk of the county  
24 court of any county wherein the corporation has  
25 property or other assets, recorded in the same manner  
26 as deeds to real property are recorded, shall impart the  
27 same notice as would be imparted by a deed, bill of sale,  
28 or other evidence of title duly recorded or filed.

29 (d) The commissioner as domiciliary receiver shall be  
30 responsible for the proper administration of all assets  
31 coming into his possession or control. The court may at  
32 any time require a bond from him or his deputies if  
33 deemed desirable for the protection of such assets. The  
34 cost of such shall be paid out of the assets of the

35 corporation as a cost of administration.

36 (e) Upon taking possession of the assets of an insurer,  
 37 the domiciliary receiver shall, subject to the direction of  
 38 the court, immediately proceed to conduct the business  
 39 of the corporation or to take such steps as are authorized  
 40 by this article for the purpose of rehabilitating,  
 41 liquidating, supervising or conserving the affairs or  
 42 assets of the corporation.

43 (f) In connection with delinquency proceedings, the  
 44 commissioner may appoint one or more special deputy  
 45 commissioners of insurance to act for him and may  
 46 employ such counsel, clerks, and assistants as he deems  
 47 necessary. The compensation of the special deputies,  
 48 counsel, clerks, or assistants and all expenses of taking  
 49 possession of the corporation and of conducting the  
 50 proceedings shall be fixed by the receiver, subject to the  
 51 approval of the court, and shall be paid out of the funds  
 52 or assets of the corporation. In the event the property  
 53 of such person does not contain cash or liquid assets  
 54 sufficient to defray the cost of the service required to  
 55 be performed under the terms of this article, the  
 56 commissioner may pay the cost of such services out of  
 57 the commissioner's "Operating-Additional Fees" ac-  
 58 count. Any amount so paid shall be deemed expenses of  
 59 administration and shall be repaid to said fund out of  
 60 the first available moneys in the estate. Within the  
 61 limits of duties imposed upon them, special deputies  
 62 shall possess all the powers given to and, in the exercise  
 63 of those powers, shall be subject to all of the duties  
 64 imposed upon the receiver with respect to such proceed-  
 65 ings.

**§33-24-24. Claims of nonresidents against a corporation.**

1 (a) In a delinquency proceeding begun in this state  
 2 against a corporation, claimants residing in reciprocal  
 3 states may file claims either with the ancillary receiv-  
 4 ers, if any, in their respective states, or with the  
 5 domiciliary receiver. All such claims must be filed on  
 6 or before the last date fixed for the filing of claims in  
 7 the domiciliary delinquency proceedings.

8 (b) Controverted claims belonging to claimants

9 residing in reciprocal states may either be proved in this  
10 state, or if ancillary proceedings have been commenced  
11 in such reciprocal states, may be proved in those  
12 proceedings. In the event a claimant elects to prove his  
13 claim in ancillary proceeding, if notice of the claim and  
14 opportunity to appear and be heard is afforded the  
15 domiciliary receiver of this state as provided in section  
16 seventeen, article ten of this chapter with respect to  
17 ancillary proceedings in this state, the final allowance  
18 of such claim by the courts in the ancillary state shall  
19 be accepted in this state as conclusive as to its amount  
20 and shall also be accepted as conclusive as to its priority,  
21 if any, against special deposits or other security located  
22 within the ancillary state.

**§33-24-25. Proof of claims.**

1 (a) All claims against a corporation against which  
2 delinquency proceedings have begun shall set forth in  
3 reasonable detail the amount of the claim, or the basis  
4 upon which such amount can be ascertained, the facts  
5 upon which the claim is based, and the priorities  
6 asserted, if any. All such claims shall be verified by the  
7 affidavit of the claimant, or someone authorized to act  
8 on his behalf and having knowledge of the facts, and  
9 shall be supported by such documents as may be  
10 material thereto.

11 (b) All claims filed in this state shall be filed with the  
12 receiver, whether domiciliary or ancillary, in this state,  
13 on or before the last date for filing as specified in this  
14 article.

15 (c) When a claim is denied in whole or in part by the  
16 liquidator, written notice of the determination shall be  
17 given to the claimant or his attorney by first class mail  
18 at the address shown in the proof of claim. Within sixty  
19 days from the mailing of the notice, the claimant may  
20 file his objections with the liquidator. If no such filing  
21 is made, the claimant may not further object to the  
22 determination.

23 (d) Whenever objections are filed with the liquidator  
24 and the liquidator does not alter his denial of the claim  
25 as a result of the objections, the liquidator shall ask the

26 court for a hearing by first class mail to the claimant  
 27 or his attorney and to any other persons directly  
 28 affected, not less than ten nor more than thirty days  
 29 before the date of the hearing. The matter may be heard  
 30 by the court or by a court-appointed referee who shall  
 31 submit findings of fact along with his recommendation.  
 32 Upon receipt of such report, the court shall fix a time  
 33 for hearing the claim and shall direct that the claimant  
 34 or the receiver, as the court shall specify, shall give such  
 35 notice as the court shall determine to such persons as  
 36 shall appear to the court to be interested therein. All  
 37 such notices shall specify the time and place of the  
 38 hearing and shall concisely state the amount and nature  
 39 of the claim, the priorities asserted, if any, and the  
 40 recommendation of the receiver with reference thereto.

41 (e) At the hearing, all persons interested shall be  
 42 entitled to appear and the court shall enter an order  
 43 allowing, allowing in part, or disallowing the claim. Any  
 44 such order shall be deemed to be an appealable order.

**§33-24-26. Priority of certain claims.**

1 (a) In a delinquency proceeding against a corporation  
 2 domiciled in this state, claims owing to residents of  
 3 ancillary states shall be preferred claims if like claims  
 4 are preferred under the laws of this state. All such  
 5 claims owing to residents or nonresidents shall be given  
 6 equal priority of payment from general assets regard-  
 7 less of where such assets are located.

8 (b) The owners of special deposit claims against a  
 9 corporation for which a receiver is appointed in this or  
 10 any other state shall be given priority against their  
 11 several special deposits in accordance with the provi-  
 12 sions of the statutes governing the creation and main-  
 13 tenance of such deposits. If there is a deficiency in any  
 14 such deposit so that the claims secured thereby are not  
 15 fully discharge therefrom, the claimants may share in  
 16 the general assets, but such sharing shall be deferred  
 17 until general creditors, and also claimants against other  
 18 special deposits who have received smaller percentages  
 19 from their respective special deposits, have been paid  
 20 percentages of their claims equal to the percentage paid



21 from the special deposit.

22 (c) The owner of a secured claim against a corporation  
23 for which a receiver has been appointed in this or any  
24 other state may surrender his security and file his claim  
25 as a general creditor, or the claim may be discharged  
26 by resort to the security, in which case the deficiency,  
27 if any, shall be treated as a claim against the general  
28 assets of the corporation on the same basis as claims of  
29 unsecured creditors. If the amount of the deficiency has  
30 been adjudicated in ancillary proceedings as provided in  
31 this article or if it has been adjudicated by a court of  
32 competent jurisdiction in proceedings in which the  
33 domiciliary receiver has had notice and opportunity to  
34 be heard, such amounts shall be conclusive; otherwise  
35 the amount shall be determined in the delinquency  
36 proceeding in the domiciliary state.

**§33-24-27. Order of distribution.**

1 The priority of distribution of claims from the  
2 corporation estate shall be in accordance with the order  
3 in which each class of claims is herein set forth. Every  
4 claim in each class shall be paid in full or adequate  
5 funds retained for such payment before the members of  
6 the next class receive any payment. No subclasses shall  
7 be established within any class. No claim by a policy-  
8 holder or other creditor shall be permitted to circum-  
9 vent the priority classes through the use of equitable  
10 remedies. The order of distribution shall be:

11 (a) Class I. The costs and expenses of administration,  
12 including, but not limited to, the following:

13 (1) The actual and necessary costs of preserving or  
14 recovering the assets of the corporation;

15 (2) Compensation for all services rendered in the  
16 liquidation;

17 (3) Any necessary filing fees;

18 (4) The fees and mileage payable to witnesses;

19 (5) Reasonable attorney's fees; and

20 (6) All expenses incurred by the department of

21 insurance arising out of the enforcement or chapter  
22 thirty-three and its regulations.

23 (b) Class II. Debts due to employees for compensation  
24 under the provision of section thirty-four of this article.

25 (c) Class III. All claims for refund of unearned  
26 premiums under nonassessable policies and all claims of  
27 policyholders including such claims of the federal or any  
28 state or local government for losses incurred and third  
29 party claims of an insolvent insurer.

30 (d) Class IV. Claims of general creditors including  
31 claims of ceding and assuming companies in their  
32 capacity as such.

33 (e) Class V. Claims of the federal or any state or local  
34 government. Claims, including those of any government-  
35 tal body for a penalty or forfeiture, shall be allowed in  
36 this class only to the extent of the pecuniary loss  
37 sustained from the act, transaction, or proceeding out of  
38 which the penalty or forfeiture arose, with reasonable  
39 and actual costs occasioned thereby. The remainder of  
40 such claims shall be postponed to the class of claims  
41 under subdivision (h) of this section.

42 (f) Class VI. Claims filed late or any other claims other  
43 than claims under subdivisions (g) and (h) of this section.

44 (g) Class VII. Surplus or contribution notes, or similar  
45 obligations and premium refunds on assessable policies.  
46 Payments to members of domestic mutual corporations  
47 shall be limited in accordance with law.

**§33-24-28. Attachment, garnishment or execution.**

1 During the pendency of delinquency proceedings in  
2 this or any reciprocal state, no action or proceeding in  
3 the nature of an attachment, garnishment or execution  
4 shall be commenced or maintained in the courts of this  
5 state against a delinquent corporation or its assets. Any  
6 lien obtained by any such action or proceeding within  
7 four months prior to the commencement of any such  
8 delinquency proceeding or at any time thereafter shall  
9 be void as against any rights arising in such delinquency  
10 proceeding.

**§33-24-29. Deposit of moneys collected.**

1       The moneys collected by the commissioner in a  
2       proceeding under this article shall be from time to time  
3       deposited in one or more state or national banks, savings  
4       banks, or trust companies, and in the case of the  
5       insolvency or voluntary or involuntary liquidation of any  
6       such depository which is an institution organized and  
7       supervised under the laws of this state, such deposits  
8       shall be entitled to priority of payment on an equality  
9       with any other priority given by the banking laws of this  
10      state. The commissioner may in his discretion deposit  
11      such moneys or any part thereof in a national bank or  
12      trust company as a trust fund.

**§33-24-30. Exemption of commissioner from fees.**

1       The commissioner shall not be required to pay any fee  
2       to any public officer in this state for filing, recording,  
3       issuing a transcript or certificate or authenticating any  
4       paper or instrument pertaining to the exercise by the  
5       commissioner of any of the powers or duties conferred  
6       upon him under this article, whether or not such paper  
7       or instrument be executed by the commissioner or his  
8       deputies, employees or attorneys of record and whether  
9       or not it is connected with the commencement of any  
10      action or proceeding by or against the commissioner, or  
11      with the subsequent conduct of such action or proceed-  
12      ing.

**§33-24-31. Borrowing on pledge of assets.**

1       For the purpose of facilitating the rehabilitation,  
2       liquidation, supervision, conservation or dissolution of a  
3       corporation pursuant to this article, the commissioner  
4       may, subject to the approval of the court, borrow money  
5       and execute, acknowledge and deliver notes or other  
6       evidences of indebtedness therefor and secure the  
7       repayment of the same by the mortgage, pledge,  
8       assignment, transfer in trust, or hypothecation of any or  
9       all of the property, whether real, personal or mixed, of  
10      such corporation, and the commissioner, subject to the  
11      approval of the court, shall have power to take any and  
12      all other action necessary and proper to consummate  
13      any such loan and to provide for the repayment thereof.

14 The commissioner shall be under no obligation person-  
15 ally or in his official capacity to repay any loan made  
16 pursuant to this section.

**§33-24-32. Date rights fixed on liquidation.**

1 The rights and liabilities of the corporation and of its  
2 creditors, policyholders, members, subscribers, and all  
3 other persons interested in its estate shall, unless  
4 otherwise directed by the court, be fixed as of the date  
5 on which the order directing the liquidation of the  
6 corporation is entered in the office of the clerk of the  
7 court which made the order, subject to the provisions of  
8 this article with respect to the rights of claimants  
9 holding contingent claims.

**§33-24-33. Voidable transfers.**

1 (a) Any transfer of, or lien upon, the property of a  
2 corporation which is made or created within four  
3 months prior to the granting of an order to show cause  
4 under this article with the intent of giving to any  
5 creditor or of enabling him to obtain a greater percent-  
6 age of his debt than any other creditor of the same class  
7 and which is accepted by such creditor having reason-  
8 able cause to believe that such preference will occur,  
9 shall be voidable.

10 (b) Every director, officer, employee, member, sub-  
11 scriber, and any other person acting on behalf of such  
12 corporation who shall be concerned in any such act or  
13 deed and every person receiving thereby any property  
14 of such corporation or the benefit thereof shall be  
15 personally liable therefor and shall be bound to account  
16 to the insurance commissioner.

17 (c) The insurance commissioner as a receiver in any  
18 proceeding under this article may avoid any transfer of  
19 or lien upon the property of a corporation which any  
20 creditor, subscriber or member of such corporation  
21 might have avoided and may recover the property so  
22 transferred unless such person was a bona fide holder  
23 for value prior to the date of the granting of an order  
24 to show cause under this article. Such property or its  
25 value may be recovered from anyone who has received

26 it except a bona fide holder for value as herein specified.

**§33-24-34. Priority of claims for compensation.**

1 (a) Compensation actually owing to employees other  
2 than officers of an insurer, for services rendered within  
3 three months prior to the commencement of a proceed-  
4 ing against the corporation under this article, but not  
5 exceeding three hundred dollars for each such employee,  
6 shall be paid prior to the payment of any other debt or  
7 claim, and in the discretion of the commissioner may be  
8 paid as soon as practicable after the proceeding has been  
9 commenced; except that at all times the commissioner  
10 shall reserve such funds as will in his opinion be  
11 sufficient for the expenses of administration.

12 (b) Such priority shall be in lieu of any other similar  
13 priority which may be authorized by law as to wages  
14 or compensation of such employees.

**§33-24-35. Offsets.**

1 (a) In all cases of mutual debts or mutual credits  
2 between the corporation and another person in connec-  
3 tion with any action or proceeding under this article,  
4 such credits and debts shall be set off and the balance  
5 only shall be allowed or paid, except as provided in  
6 subsection (b), below.

7 (b) No offset shall be allowed in favor of any such  
8 person where (1) the obligation of the corporation to  
9 such person would not at the date of the entry of any  
10 liquidation order or otherwise, as provided in section  
11 thirty-two of this article, entitle him to share as a  
12 claimant in the assets of the corporation, or (2) the  
13 obligation of the corporation to such person was  
14 purchased by or transferred to such person with a view  
15 of its being used as an offset, or (3) the obligation of such  
16 person is to pay any assessment levied against the  
17 members of a mutual insurer.

**§33-24-36. Allowance of claims.**

1 (a) No contingent claim shall share in a distribution  
2 of the assets of a corporation which has been adjudicated  
3 to be insolvent by an order made pursuant to this article,

4 except that such claim shall be considered, if properly  
5 presented, and may be allowed to share where:

6 (1) it does not prejudice the orderly administration of  
7 the liquidation, or

8 (2) There is a surplus and the liquidation is thereafter  
9 conducted upon the basis that such corporation is  
10 solvent.

11 (b) Where a corporation has been so adjudicated to be  
12 insolvent any person who has a cause of action against  
13 a member of such corporation under a policy issued by  
14 such corporation shall have the right to file a claim in  
15 the liquidation proceeding, regardless of the fact that  
16 such claim may be contingent, and such claim may be  
17 allowed:

18 (1) If it may be reasonably inferred from the proof  
19 presented upon such claim that such person would be  
20 able to obtain a judgment upon such cause of action  
21 against such member, and

22 (2) If such person shall furnish suitable proof, unless  
23 the court for good cause shown shall otherwise direct,  
24 that no further valid claim against such corporation  
25 arising out of his cause of action other than those  
26 already presented can be made, and

27 (3) If the total liability of such corporation to all  
28 claimants arising on behalf of its member shall be no  
29 greater than its maximum liability would be were it not  
30 in liquidation.

31 (c)(1) No judgment against such a member taken after  
32 the date of entry of the liquidation order shall be  
33 considered in the liquidation proceedings as evidence of  
34 liability, or of the amount of damages, and no judgment  
35 against a member taken by default or by collusion prior  
36 to the entry of the liquidation order shall be considered  
37 as conclusive evidence in the liquidation proceedings,  
38 either of the liability of such member to such person  
39 upon such cause of action or of the amount of damages  
40 to which such person is therein entitled.

41 (2) A claim by a third party founded upon a policy

42 may be allowed without requiring such claim to be  
43 reduced to judgment, provided it can be reasonably  
44 inferred from the proof presented that the claimant  
45 would be able to obtain a judgment upon his cause of  
46 action against the member and that such judgment  
47 would represent a liability of the corporation in  
48 liquidation under the policy upon which such claim is  
49 founded.

50 (d) No claim of any secured claimant shall be allowed  
51 at a sum greater than the difference between the value  
52 of the claim without security and the value of the  
53 security itself as of the date of the entry of the order  
54 of liquidation or such other date set by the court for  
55 determining rights and liabilities as provided in section  
56 thirty-two of this article unless the claimant shall  
57 surrender his security to the commissioner, in which  
58 event the claim shall be allowed in the full amount for  
59 which it is valued.

60 (e) Whenever a creditor whose claim against a  
61 corporation is secured, in whole or in part, by the  
62 undertaking of another person, fails to prove and file  
63 that claim the other person may do so in the creditor's  
64 name, and shall be subrogated to the rights of the  
65 creditor, whether the claim has been filed by the  
66 creditor or by the other person in the creditor's name,  
67 to the extent that he discharges the undertaking. In the  
68 absence of an agreement with the creditor to the  
69 contrary, the other person shall not be entitled to any  
70 distribution, however, until the amount paid to the  
71 creditor on the undertaking plus the distributions paid  
72 on the claim from the insurer's estate to the creditor  
73 equals the amount of the entire claim of the creditor.  
74 Any excess received by the creditor shall be held by him  
75 in trust for such other person. The term "other person",  
76 as used in this section is not intended to apply to a  
77 guaranty association or foreign guaranty association.

78 (f) Unless such claim is filed in the manner and within  
79 the time provided in section twenty-five, it shall not be  
80 entitled to filing or allowance, and no action may be  
81 maintained thereon. In the liquidation, pursuant to the  
82 provisions of this article, of any domestic corporation

83 which has issued policies insuring the lives of persons,  
 84 the commissioner shall, within thirty days after the last  
 85 day set for the filing of claims, make a list of the persons  
 86 who have not filed proofs of claim with him and to  
 87 whom, according to the books of said insurer, there are  
 88 amounts owing under such policies, and he shall set  
 89 opposite the name of each such person the amount so  
 90 owing to such person. Each person whose name shall  
 91 appear upon said list shall be deemed to have duly filed,  
 92 prior to the last day set for the filing of claims, a claim  
 93 for the amount set opposite his name on said list.

94 (g)(1) Claims founded upon unliquidated or undeter-  
 95 mined demands must be filed within the time limit  
 96 provided in this article for the filing of claims, but  
 97 claims founded upon such demands shall not share in  
 98 any distribution to creditors of a person proceeded  
 99 against under section twenty-seven, until such claims  
 100 have been definitely determined, proved and allowed.  
 101 Thereafter, such claims shall share ratably with other  
 102 claims of the same class in all subsequent distributions.

103 (2) An unliquidated or undetermined claim or demand  
 104 within the meaning of this article shall be deemed to be  
 105 any such claim or demand upon which a right of action  
 106 has accrued at the date of the order of liquidation and  
 107 upon which the liability has not been determined or the  
 108 amount thereof liquidated.

109 (h)(1) The commissioner may require, as a condition  
 110 of payment of the final liquidation dividend to a lender,  
 111 or his assignee, who has filed a claim for an unearned  
 112 premium as an assignee of the member for valuable  
 113 consideration:

114 (A) That such assignee of the member shall assign to  
 115 the liquidator all his right, title, and interest in any  
 116 unsatisfied debt of the member to such assignee,  
 117 pertaining to policies of the insolvent corporation,  
 118 remaining unpaid after crediting the final liquidation  
 119 dividend, if the amount of such unsatisfied debt is less  
 120 than one hundred dollars and one cent.

121 (B) The delivery to him of all the documents giving  
 122 rise to such debt.



123       (2) The commissioner may determine whether or not  
124 it will be feasible to attempt to collect any such assigned  
125 debt. If he determines not to pursue collection of any  
126 such debt, he shall file a declaration to that effect with  
127 the liquidation court and be relieved of any further  
128 responsibility in respect to such debt.

129       (3) As used in this subsection, "member" means a  
130 natural person who purchased coverage from the  
131 insolvent corporation for personal or family purposes.

**§33-24-37. Time within which claims to be filed.**

1       (a) If upon the granting of an order of liquidation  
2 under this article or at any time thereafter during the  
3 liquidation proceeding, the corporation shall not be  
4 clearly solvent, the court shall, after such notice and  
5 hearing as it deems proper, make an order declaring the  
6 corporation to be insolvent. Thereupon regardless of any  
7 prior notice which may have been given to creditors, the  
8 commissioner shall notify all persons who may have  
9 claims against such corporation and who have not filed  
10 proper proofs thereof to present the same to him, at a  
11 place specified in such notice, within four months from  
12 the date of entry of such order, or if the commissioner  
13 shall certify that it is necessary, within such longer time  
14 as the court shall prescribe. The last day for filing of  
15 proofs of claims shall be specified in the notice, and  
16 notice shall be given in a manner to be determined by  
17 the court.

18       (b) Proofs of claim may be filed subsequent to the date  
19 specified, but no such claim shall share in the distribu-  
20 tion of the assets until all allowed claims, proofs of  
21 which have been filed before said date, have been paid  
22 in full with interest.

**§33-24-38. Assessment.**

1       The provisions of sections thirty-one, thirty-two,  
2 thirty-three, thirty-four and thirty-five, article ten, of  
3 this chapter shall apply to any corporation organized  
4 under this article as a mutual corporation.

**§33-24-39. Creating preference among creditors; dis-  
bursement of assets.**

1 (a) Within one hundred twenty days of a final  
2 determination of insolvency of a corporation by the  
3 circuit court, the commissioner shall make application  
4 to the court for approval of a proposal to disperse assets  
5 out of such company's marshalled assets, from time to  
6 time as such assets become available. If the commis-  
7 sioner determines that there are insufficient assets to  
8 disburse, the application required by this section shall  
9 be satisfied by a filing by the commissioner stating the  
10 reasons for this determination.

11 (b) Such proposal shall at least include provisions for:

12 (1) Reserving amounts for the payment of expenses of  
13 administration and of claims falling within the priori-  
14 ties established in this article but only with respect to  
15 such priorities higher than that of the associations;

16 (2) Disbursement of the assets marshalled to date and  
17 subsequent disbursement of assets as they become  
18 available;

19 (c) Action on the application may be taken by the  
20 court provided the above required notice has been given  
21 and provided that the commissioner's proposal complies  
22 with paragraphs (1) and (2), of subsection (b) hereof.

#### **§33-24-40. Distribution of Assets.**

1 Under the direction of the court, the liquidator shall  
2 pay distributions in a manner that will assure the  
3 proper recognition of priorities and a reasonable balance  
4 between the expeditious completion of the liquidation  
5 and the protection of unliquidated and undetermined  
6 claims, including third party claims. Distribution of  
7 assets in kind may be made at valuations set by  
8 agreement between the liquidator and the creditor and  
9 approved by the court.

#### **§33-24-41. Unclaimed and withheld funds.**

1 All unclaimed funds subject to distribution remaining  
2 in the liquidator's hands when he is ready to apply to  
3 the court for discharge, including the amount distrib-  
4 utable to any creditor, member or other person who is  
5 unknown or cannot be found, shall be deposited with the

6 state treasurer, and shall be paid without interest to the  
7 person entitled thereto or his legal representative upon  
8 proof satisfactory to the state treasurer of his right  
9 thereto. Any amount on deposit not claimed within six  
10 years from the discharge of the liquidator shall be  
11 deemed to have been abandoned and shall be escheated  
12 to the state of West Virginia without formal escheat  
13 proceedings and be deposited with the general fund.

**§33-24-42. Immunity in receivership proceedings.**

1 (a) No claim of any nature whatsoever that is directly  
2 related to the receivership of a corporation shall rise  
3 against, and no liability shall be imposed upon, the  
4 insurance commissioner, special deputy commissioner,  
5 or any person or entity acting as a receiver of a  
6 corporation, including surety, in rehabilitation, liquida-  
7 tion, supervision or conservation as a result of a court  
8 order issued on or after the first day of January, one  
9 thousand nine hundred eighty-five for any statement  
10 made or actions taken or not taken in the good faith  
11 exercise of their powers under law. However, this  
12 immunity shall not extend to acts or omissions which are  
13 malicious or grossly negligent. This qualified immunity  
14 extends to agents and employees of the receiver.

15 (b) Representation of special deputy commissioners. In  
16 any civil proceeding filed against a special deputy  
17 commissioner appointed pursuant to this subtitle, the  
18 special deputy commissioner shall be entitled to be  
19 represented by the attorney general.

**ARTICLE 25. HEALTH CARE CORPORATIONS.**

**§33-25-19. Administrative supervision.**

1 Every health care corporation subject to the provi-  
2 sions of this article is subject to the provisions of article  
3 thirty-four of this chapter.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-30. Administrative supervision.**

1 Every health maintenance organization subject to the  
2 provisions of this article is subject to the provisions of  
3 article thirty-four of this chapter.

**ARTICLE 31. CAPTIVE INSURANCE.**

**§33-31-6. Corporate organization.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 32. RISK RETENTION ACT.**

**§33-32-3. Charter and license requirements for domestic groups.**

1 A risk retention group seeking to be chartered in this  
2 state must be chartered and licensed as a liability  
3 insurance company authorized by the insurance laws of  
4 this state and, except as provided elsewhere in this  
5 article, must comply with all of the laws, rules,  
6 regulations and requirements applicable to such insur-  
7 ers chartered and licensed in this state and with section  
8 four of this article to the extent such requirements are  
9 not a limitation on laws, rules, regulations or require-  
10 ments of this state. Risk retention groups are subject to  
11 the provisions of article thirty-three and article thirty-  
12 four of this chapter. Before it may offer insurance in any  
13 state, each risk retention group shall also submit for  
14 approval to the insurance commissioner of this state a  
15 plan of operation or a feasibility study and revisions of  
16 such plan or study if the group intends to offer any  
17 additional lines of liability insurance.

**ARTICLE 34. ADMINISTRATIVE SUPERVISION.**

**§33-34-1. Definitions.**

1 For the purposes of this article the following defini-  
2 tions shall apply:

3 (a) "Insurer" means and includes every person  
4 engaged as indemnitor, surety or contractor in the

5 business of entering into contracts of insurance or of  
6 annuities as limited to:

7 (1) Any insurer who is doing an insurer business, or  
8 has transacted insurance in this state, and against whom  
9 claims arising from that transaction may exist now or  
10 in the future;

11 (A) This shall include but not be limited to any  
12 domestic insurer as defined in section six, article one of  
13 chapter thirty-three and any foreign insurer as defined  
14 in section seven, article one of said chapter thirty-three  
15 including any stock insurer, mutual insurer, reciprocal  
16 insurer, farmers' mutual fire insurance company,  
17 fraternal benefit society, hospital service corporation,  
18 medical service corporation, dental service corporation,  
19 health service corporation, health care corporation,  
20 health maintenance organization, captive insurance  
21 company or risk retention group.

22 (b) "Exceeded its powers" means the following  
23 conditions:

24 (1) The insurer has refused to permit examination of  
25 its books, papers, accounts, records or affairs by the  
26 commissioner, his deputy, employees, or duly commis-  
27 sioned examiners;

28 (2) A domestic insurer has unlawfully removed from  
29 this state books, papers, accounts or records necessary  
30 for an examination of the insurer;

31 (3) The insurer has failed to promptly comply with the  
32 applicable financial reporting statutes or rules and  
33 departmental requests relating thereto;

34 (4) The insurer has neglected or refused to observe an  
35 order of the commissioner to make good, within the time  
36 prescribed by law, any prohibited deficiency in its  
37 capital, capital stock or surplus;

38 (5) The insurer is continuing to transact insurance or  
39 write business after its license has been revoked or  
40 suspended by the commissioner;

41 (6) The insurer, by contract or otherwise, has unlaw-  
42 fully or has in violation of an order of the commissioner

43 or has without first having obtained written approval of  
44 the commissioner if approval is required by law;

45 (A) Totally reinsured its entire outstanding business;  
46 or

47 (B) Merged or consolidated substantially its entire  
48 property or business with another insurer.

49 (7) The insurer engaged in any transaction in which  
50 it is not authorized to engage under the laws of this  
51 state; or

52 (8) The insurer refused to comply with a lawful order  
53 of the commissioner.

54 (c) "Consent" means agreement to administrative  
55 supervision by the insurer.

**§33-34-2. Applicability.**

1 The provisions of this article shall only apply to:

2 (a) All domestic insurers; and

3 (b) Any other insurer doing business in this state  
4 whose state of domicile has asked the commissioner to  
5 apply the provisions of this article as regards such  
6 insurer.

**§33-34-3. Notice to comply with written requirements of  
commissioner, noncompliance and adminis-  
trative supervision.**

1 (a) An insurer may be subject to administrative  
2 supervision by the commissioner if upon examination or  
3 at any other time it appears in the commissioner's  
4 discretion that:

5 (1) The insurer's condition renders the continuance of  
6 its business hazardous to the public or to its insureds;

7 (2) The insurer has or appears to have exceeded its  
8 powers granted under its certificate of authority and  
9 applicable law;

10 (3) The insurer has failed to comply with the appli-  
11 cable provisions of the insurance code;

12 (4) The business of the insurer is being conducted

13 fraudulently; or

14 (5) The insurer gives its consent.

15 (b) If the commissioner determines that the conditions  
16 set forth in subsection (a) of this section exist, the  
17 commissioner shall:

18 (1) Notify the insurer of his determination;

19 (2) Furnish to the insurer a written list of his  
20 requirements to abate his determination; and

21 (3) Notify the insurer that it is under the supervision  
22 of the commissioner and that the commissioner is  
23 applying and effectuating the provisions of the article.  
24 Such action by the commissioner shall be subject to  
25 review pursuant to applicable state administrative  
26 procedures under article two of this chapter.

27 (c) If placed under administrative supervision, within  
28 sixty days the insurer shall comply with the require-  
29 ments of the commissioner subject to the provisions of  
30 this article.

31 (d) If it is determined after notice and hearing that  
32 conditions giving rise to the supervision still exist at the  
33 end of the supervision period specified above, the  
34 commissioner may extend such period.

35 (e) If it is determined by the commissioner that  
36 conditions giving rise to the supervision have been  
37 corrected, said commissioner shall release the insurer  
38 from supervision.

**§33-34-4. Confidentiality of certain proceedings and records.**

1 Proceedings, hearings, notices, correspondence, re-  
2 ports, records and other information in the possession of  
3 the commissioner or the department relating to the  
4 supervision of any insurer shall not be subject to  
5 disclosure as provided in article one, chapter twenty-  
6 nine-b of this code.

**§33-34-5. Prohibited acts during period of supervision.**

1 An insurer may not engage in the following actions



2 during the period of supervision, without the prior  
3 approval of the commissioner or his or her special  
4 deputy supervisor:

5 (1) Dispose of, convey, or encumber any of its assets  
6 or its business in force;

7 (2) Withdraw any of its bank accounts;

8 (3) Lend any of its funds;

9 (4) Invest any of its funds;

10 (5) Transfer any of its property;

11 (6) Incur any debt, obligation or liability;

12 (7) Merge or consolidate with another company;

13 (8) Approve new premiums or renew any policies;

14 (9) Enter into any new reinsurance contract or treaty;

15 (10) Terminate, surrender, forfeit, convert or lapse  
16 any insurance policy, certificate or contract, except for  
17 nonpayment of premiums due;

18 (11) Release, pay or refund premium deposits,  
19 accrued cash or loan values, unearned premiums, or  
20 other reserves on any insurance policy, certificate or  
21 contract;

22 (12) Make any material change in management; or

23 (13) Increase salaries and benefits of officers or  
24 directors or the preferential payment of bonuses,  
25 dividends, or other payments deemed preferential.

**§33-34-6. Administrative election of proceedings.**

1 Nothing contained in this article shall preclude the  
2 commissioner from initiating judicial proceedings to  
3 place an insurer in rehabilitation or liquidation proceed-  
4 ings or other delinquency proceedings, however desig-  
5 nated under the laws of this state, regardless of whether  
6 the commissioner has previously initiated administra-  
7 tive supervision proceedings under this article against  
8 the insurer.

**§33-34-7. Rules.**

1 The department is empowered to adopt reasonable  
2 rules pursuant to chapter twenty-nine-a of this code  
3 deemed necessary for the implementation of this article.

**§33-34-8. Meetings between the commissioner and the  
special deputy supervisor.**

1 Notwithstanding any other provision of this code to  
2 the contrary, the commissioner may meet with a special  
3 deputy supervisor appointed under this article and with  
4 the attorney or other representative of the special  
5 deputy supervisor, without the presence of any other  
6 person, at the time of any proceeding or during the  
7 pendency of any proceeding held under authority of this  
8 article to carry out the commissioner's responsibilities  
9 as provided in this article or for the special deputy  
10 supervisor to carry out his or her duties as provided in  
11 this article.

**§33-34-9. Special deputy supervisor appointed and  
expenses.**

1 (1) During the period of supervision the department  
2 by contract or otherwise may appoint a special deputy  
3 supervisor to supervise the insurer. In the event that a  
4 special deputy supervisor is not appointed, the commis-  
5 sioner shall serve in such capacity.

6 (2) Each insurer which is subject to administrative  
7 supervision by the department shall pay to the depart-  
8 ment the expenses of its administrative supervision at  
9 the rates established by the department. Expenses shall  
10 include actual travel expenses, a reasonable living  
11 expense allowance, compensation of the special deputy  
12 supervisor or other persons employed or appointed by  
13 the department for purposes of the supervision, and  
14 necessary attendant administrative cost of the depart-  
15 ment directly related to the supervision. The travel  
16 expense and living expense allowance shall be limited  
17 to those expenses necessarily incurred in the perfor-  
18 mance of official duties relating to the administrative  
19 supervision and shall be paid by the insurer together  
20 with compensation upon presentation by the department  
21 to the insurer of a detailed account of the charges and  
22 expenses after a detailed statement has been filed by the

23 special deputy supervisor or other person employed or  
24 appointed by the department and approved by the  
25 department.

26 (3) All moneys collected from insurers for the ex-  
27 penses of administrative supervision shall be deposited  
28 into an account created in the state treasury designated  
29 the "Insurance Commissioner's Regulatory Trust Fund",  
30 and the department is authorized to make deposits when  
31 required into this fund from moneys collected in the  
32 commissioner's "Operating-Add'l Fees" account.

33 (4) The department is authorized to pay to the special  
34 deputy supervisor or person employed or appointed by  
35 the department for purposes of the supervision out of  
36 such trust fund, as created in subsection three of this  
37 section, the actual travel expenses, reasonable living  
38 expense allowance, and compensation in accordance  
39 with the statement filed with the department by the  
40 special deputy supervisor or other person, as provided  
41 in subsection (2), upon approval by the department.

42 (5) The department may in whole or in part defer  
43 payment of expenses due from the insurer pursuant to  
44 this section upon a showing that payment would  
45 adversely impact the financial condition of the insurer  
46 and jeopardize its rehabilitation. The payment shall be  
47 made by the insurer when the condition is removed and  
48 the payment would no longer jeopardize the insurer's  
49 financial condition.

**§33-34-10. Immunity.**

1 There shall be no liability on the part of, and no cause  
2 of action of any nature shall arise against, the insurance  
3 commissioner or the department or its employees or  
4 agents thereof for any action taken by them in the  
5 performance of their powers and duties under this  
6 article.

**§33-34-11. Severability.**

1 In the event any part or provision of this article be  
2 held to be unconstitutional by any court of competent,  
3 jurisdiction, such holding and decision of the court shall  
4 not affect the validity and constitutionality of the

5 remaining parts and provisions of this article.

**ARTICLE 35. CRIMINAL SANCTIONS FOR FAILURE TO REPORT  
IMPAIRMENT.**

**§33-35-1. Definitions.**

1 For the purposes of this article, the following words  
2 shall mean:

3 (a) "Insurer" means any insurance company or other  
4 insurer licensed to do business in this state. This  
5 includes, but is not limited to, any domestic insurer as  
6 defined in section six, article one of this chapter and  
7 includes any domestic stock insurance company, mutual  
8 insurance company, reciprocal insurance company,  
9 farmers' mutual fire insurance company, fraternal  
10 benefit society, hospital service corporation, medical  
11 service corporation, dental service corporation, health  
12 service corporation, health care corporation, health  
13 maintenance organization, captive insurance company  
14 or risk retention group.

15 (b) "Impaired" means a financial situation in which,  
16 based upon the requirements of this chapter for the  
17 preparation of the insurer's annual statement, the  
18 insurer's assets are less than the insurer's liabilities and  
19 the required reserves together with the insurer's  
20 minimum required capital and minimum required  
21 surplus as required by this chapter to be maintained to  
22 transact the type of business for which the insurer is  
23 authorized by this chapter to transact.

24 (c) "Chief executive officer" means the person,  
25 irrespective of their title, designated by the board of  
26 directors or board of trustees or other similar governing  
27 body of an insurer as the person charged with the  
28 responsibility and authority of administering and  
29 implementing the insurer's policies and procedures.

**§33-35-2. Duty to notify.**

1 (a) Whenever an insurer is impaired, its chief  
2 executive officer shall immediately notify the commis-  
3 sioner in writing of such impairment and shall also  
4 immediately notify in writing all of the members of the  
5 board of directors, board of trustees or other similar

6 governing body of the insurer.

7 (b) Any officer, director or trustee of an insurer shall  
8 immediately notify the person serving as chief executive  
9 officer of the impairment of such insurer in the event  
10 such officer, director, or trustee knows or has reason to  
11 know that the insurer is impaired.

**§33-35-3. Penalty.**

1 (a) Any person who knowingly violates section two of  
2 this article is guilty of a misdemeanor, and, upon  
3 conviction thereof, shall be fined not more than fifty  
4 thousand dollars or be imprisoned in the county jail not  
5 more than one year, or both fined and imprisoned.

6 (b) Any person who knowingly:

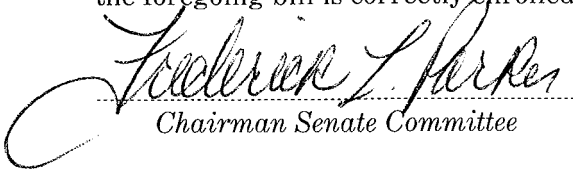
7 (1) Conceals any property belonging to an insurer;

8 (2) Transfers or conceals in contemplation of a state  
9 insolvency proceeding his own property or property  
10 belonging to an insurer;

11 (3) Conceals, destroys, mutilates, alters or makes a  
12 false entry in any document which affects or relates to  
13 the property of an insurer or withholds any such  
14 document from a receiver, trustee or other officer of a  
15 court entitled to its possession; or

16 (4) Gives, obtains or receives a thing of value for  
17 acting or forbearing to act in any court proceeding; and  
18 any such act results in or contributes to an insurer  
19 becoming impaired or insolvent, is guilty of a felony,  
20 and, upon conviction thereof, shall be imprisoned in the  
21 penitentiary not more than five years.

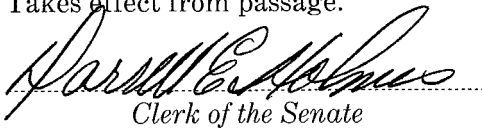
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

  
Chairman House Committee

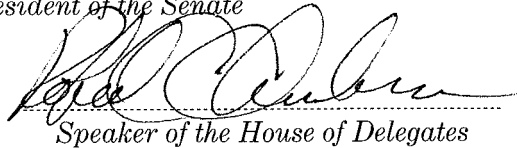
Originating in the House.

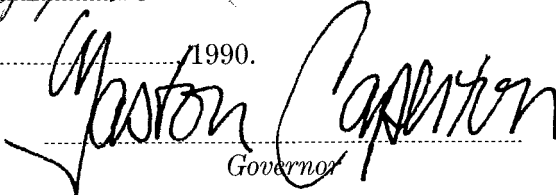
Takes effect from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 28th  
day of March 1990.  
  
Governor

PRESENTED TO THE

GOVERNOR

DATE

3/27/90

TIME

10:12 am

