WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for

HOUSE BILL No. 4195

(By Mr. Speaker, Mr. Charles, and Del. B. Bevel)

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Passed March 10, 1990

In Effect 90 Days 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.
For the purpose of this article the following definitions shall apply:

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

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

(c) "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this article for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

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

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

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

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

(h) "Reciprocal state" means any state other than this
state in which in substance and effect the provisions of
the Uniform Insurers Liquidation Act, as defined in
section twenty-one of this article, are in force, including
the provisions requiring that the insurance commis-
sioner or equivalent insurance supervisory official be the
receiver of a delinquent insurer.

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

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

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

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

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

(n) "Guaranty association" means the West Virginia
Insurance Guaranty Association created by article
twenty-six of this chapter, the West Virginia Life and
Health Insurance Guaranty Association Act created by
article twenty-six-a of this chapter, and any other
similar entity now or hereafter created by the Legislature of this state for the payment of claims of insolvent insurers.

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

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

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

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

(c) With the exception of administrative supervision pursuant to article thirty-four of this chapter, delinquency proceedings pursuant to this article shall constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing or conserving an insurer, and no court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the state on the relation of the insurance commissioner.

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

(e) At any time after an order is made under section ten or eleven of this article, the commissioner may remove the principal office of the insurer proceeded against to Kanawha county. In the event of such
removal, the court wherein the proceeding was origi-
nally commenced shall, upon the application of the
commissioner, direct its clerk to transmit all the
pleadings, motions and other papers filed therein with
such clerk to the clerk of the circuit court of Kanawha
county. The proceeding shall thereafter be subject to the
jurisdiction of the Kanawha county circuit court and
conducted in the same manner as though it had been
commenced in the Kanawha county circuit court.

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

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

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

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

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

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

(c) The court shall specify in the order what its
duration shall be, which shall be such time as the court
deems necessary for the commissioner to ascertain the
condition of the insurer. On motion of either party or
on its own motion, the court may from time to time hold
such hearings as it deems desirable after such notice as
it deems appropriate, and may extend, shorten, or
modify the terms of the seizure order. The court shall
vacate the seizure order if the commissioner fails to
commence a delinquency proceeding under this article
after having had a reasonable opportunity to do so. An
order of the court pursuant to a formal proceeding
under this article shall ipso facto vacate the seizure
order.

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

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

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

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

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

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

(2) The court may at any time during a proceeding
under this article issue such other injunctions or orders
as may be deemed necessary to prevent interference
with the commissioner or the proceeding, or waste of the
assets of the insurer, or the commencement or prosecu-
tion of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(3) The court may order any managing general agent or attorney in fact to release to the commissioner any books, records, accounts, documents or other writings relating to the business of such person: 

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

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

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

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

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

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

(a) Is impaired or insolvent.
(b) Has refused to submit to reasonable examination by the commissioner, its property, books, records, accounts or affairs or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer as far as they pertain to the insurer.

(c) Has failed to comply with an order of the commissioner to make good an impairment of capital or surplus or both.

(d) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer or other legal entity without having first obtained the written approval of the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Upon the ground that the insurer has failed to comply, within the time designated by the commissioner, with an order made by him to make good an impairment of its trusteeed funds, or

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

§33-10-10. Order of rehabilitation.

(a) An order to rehabilitate a domestic insurer or the United States branch of an alien insurer having trusteeed assets in this state shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions
which have made rehabilitation necessary as the court may direct.

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

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

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

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

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

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

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

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

(f) In connection with delinquency proceedings, the
commissioner may appoint one or more special deputy
commissioners of insurance to act for him and may
employ such counsel, clerks, and assistants as he deems
necessary. The compensation of the special deputies,
counsel, clerks, or assistants and all expenses of taking
possession of the insurer and of conducting the proceed-
ings shall be fixed by the receiver, subject to the
approval of the court, and shall be paid out of the funds
or assets of the insurer. In the event the property of such
person does not contain cash or liquid assets sufficient
to defray the cost of the service required to be per-
formed under the terms of this article, the commissioner
may pay the cost of such services out of the commissi-
er's “Operating-Add'l. Fees” account. Any amount so
paid shall be deemed expenses of administration and
shall be repaid to said fund out of the first available
moneys in the estate. Within the limits of duties imposed
upon them, special deputies shall possess all the powers
given to and, in the exercise of those powers, shall be
§33-10-18. Proof of claims.

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

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

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

(d) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or his attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All
such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

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

§33-10-19a. Priority of distribution.

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

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

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

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

(3) Any necessary filing fees;

(4) The fees and mileage payable to witnesses;

(5) Reasonable attorney's fees; and

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

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

(c) Class III. All claims for refund of unearned premiums under nonassessable policies and all claims of
policyholders including such claims of the federal or any state or local government for losses incurred and third party claims of an insolvent insurer and all reasonable claims of the West Virginia insurance guaranty associations and associations or entities performing a similar function in other states.

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

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

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

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

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


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

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

§33-10-29. Allowance of certain claims.
(a) No contingent claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to this article, except that such claim shall be considered, if properly presented, and may be allowed to share where:

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

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

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

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

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

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

(c) No judgment against such an insured taken after the date of entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceedings, either of the liability of such insurer to such person upon such cause of action or of the amount of damages to which such person is therein entitled.
(1) A claim by a third party founded upon an insurance policy may be allowed without requiring such claim to be reduced to judgment, provided it can be reasonably inferred from the proof presented that the claimant would be able to obtain a judgment upon his cause of action against the insured and that such judgment would represent a liability of the insurer in liquidation under the policy of insurance upon which such claim is founded.

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

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

(f) Unless such claim is filed in the manner and within the time provided in section eighteen, it shall not be entitled to filing or allowance, and no action may by maintained thereon. In the liquidation, pursuant to the
provisions of this article, of any domestic insurer which 
has issued policies insuring the lives of persons, the 
commissioner shall, within thirty days after the last day 
set for the filing of claims, make a list of the persons 
who have not filed proofs of claim with him and to 
whom, according to the books of said insurer, there are 
amounts owing under such policies, and he shall set 
opposite the name of each such person the amount so 
owing to such person. Each person whose name shall 
appear upon said list shall be deemed to have duly filed, 
prior to the last day set for the filing of claims, a claim 
for the amount set opposite his name on said list.

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

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

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

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

(A) That all of the documents giving rise to such debt
be delivered to him or her.

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

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

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

(a) Within one hundred twenty days of a final determination of insolvency of an insurance company by the circuit court, the commissioner shall make application to the court for approval of a proposal to disperse assets out of such company’s marshaled assets, from time to time as such assets become available, to the West Virginia insurance guaranty association and any similar organization performing a similar function in another state. The West Virginia insurance guaranty association and any entity or person performing a similar function in other states shall hereinafter be referred to collectively as the associations. If the commissioner determines that there are insufficient assets to disburse, the application required by this section shall be satisfied by a filing by the commissioner stating the reasons for this determination.

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

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

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

(3) Equitable allocation of disbursements to each of
the associations entitled thereto;

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

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

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

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

§33-10-37. Distribution of assets.

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

§33-10-38. Unclaimed and withheld funds.
1 All unclaimed funds subject to distribution remaining in the liquidator’s hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest to the person entitled thereto or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator shall be deemed to have been abandoned and shall be escheated to the State of West Virginia without formal escheat proceedings and be deposited with the 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 related to the receivership of an insurer shall arise against, and no liability shall be imposed upon, the insurance commissioner, deputy commissioner, special deputy supervisor, or any person or entity acting as a receiver of an insurer, including surety, in rehabilitation, liquidation, or conservation as a result of a court order issued on or after the effective date of this article for any statement made or actions taken or not taken in the good faith exercise of their powers under law. However, this immunity shall not extend to acts or omissions which are malicious or grossly negligent. This qualified immunity extends to agents and employees of the receiver.

(b) In any civil proceeding filed against a special deputy supervisor appointed pursuant to this article, the special deputy supervisor shall be entitled to be
ARTICLE 22. FARMERS’ MUTUAL FIRE INSURANCE COMPANIES.


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

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.


1. Every fraternal benefit society shall be governed and be subject, to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions), article six, section thirty (fee for form and rate filing), article ten (rehabilitation and liquidation), article eleven (unfair trade practices), article twelve (agents, brokers, solicitors and excess lines), article
§33-24-4. Exemptions; applicability of insurance laws.

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


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

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

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

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

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

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

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

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

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

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

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

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

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

(m) "Receiver" means receiver, liquidator, rehabilitator, supervisor or conservator as the context may require.

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

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

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

(c) Delinquency proceedings pursuant to this article shall constitute the sole and exclusive method of liquidating, rehabilitating, supervising, reorganizing or conserving a corporation, and no court shall entertain
a petition for the commencement of such proceedings
unless the same has been filed in the name of the state
on the relation of the insurance commissioner.

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

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


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

§33-24-17. Ex parte orders, injunctions and other orders.
(a) The commissioner may file in the appropriate
circuit court of this state a petition for an ex parte order
alleging, with respect to a corporation:

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

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

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

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

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

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

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

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

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

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

The court may at any time during a proceeding under this article issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the corporation, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

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

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

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

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


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

(a) Is impaired or insolvent.

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

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

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

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

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

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

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

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


The commissioner may apply to the court for an order appointing him as a receiver (if his appointment as receiver shall not be then in effect) and directing him to liquidate the business of such corporation regardless of whether or not there has been a prior order directing
him to rehabilitate such corporation, upon any of the
grounds specified in this article, or if such corporation:

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

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

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

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

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

(1) Notify such corporation of his determination; and

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

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

(c) Upon the issuance of a court order of administra-
tive supervision to the commissioner, the commissioner
may appoint a supervisor to supervise such corporation.
The order appointing a supervisor shall direct the supervisor to enforce orders issued by the court including orders requiring that such corporation may not do any of the following things during the period of supervision, without the prior approval of the commissioner or his supervisor:

(1) Dispose of, convey or encumber any of its assets or its business in force;
(2) Withdraw from any of its bank accounts;
(3) Lend any of its funds;
(4) Invest any of its funds;
(5) Transfer any of its property;
(6) Incur any debt, obligation or liability;
(7) Merge or consolidate with any company;
(8) Enter into any new reinsurance contract or treaty.
(9) Approve new premiums or renew any policies;
(10) Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums due;
(11) Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;
(12) Make any material change in management; or
(13) Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends, or other payments deemed preferential.

(d) Any such corporation subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the commissioner. In the event of such corporation’s failure to comply within such times, the commissioner may institute proceedings under section sixteen of this
article to have a rehabilitator or liquidator appointed, or extend the period of supervision.

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

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

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

(h) In the event that any person, subject to the provisions of this article, including officers, managers, directors, trustees, owners, employees or agents or any person with authority over or in charge of the corporation's affairs, shall knowingly violate any valid order of
the commissioner issued under the provisions of this
section and, as a result of such violation, the net worth
of the corporation shall be reduced or the corporation
shall suffer loss it would otherwise have suffered, said
person shall become personally liable to the corporation
for the amount of any such reduction or loss. The
commissioner or supervisor is authorized to bring an
action on behalf of the corporation in the circuit court
to recover the amount of the reduction or loss together
with any costs.


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

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

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


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

(b) The commissioner may apply for and secure an
§33-24-23. Conduct of delinquency proceedings against a corporation.

(a) Whenever under this article a receiver is to be appointed in delinquency proceedings for a corporation, the court shall appoint the insurance commissioner as such receiver. The court shall order the commissioner forthwith to take possession of the assets of the corporation and to administer the same under the orders of the court.

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

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

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

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

(f) In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners of insurance to act for him and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the corporation and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the corporation. In the event the property of such person does not contain cash or liquid assets sufficient to defray the cost of the service required to be performed under the terms of this article, the commissioner may pay the cost of such services out of the commissioner’s “Operating-Additional Fees” account. Any amount so paid shall be deemed expenses of administration and shall be repaid to said fund out of the first available moneys in the estate. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.


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

(b) Controverted claims belonging to claimants
residing in reciprocal states may either be proved in this state, or if ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceeding, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in section seventeen, article ten of this chapter with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

§33-24-25. Proof of claims.

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

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

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

(d) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the
court for a hearing by first class mail to the claimant or his attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

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


(a) In a delinquency proceeding against a corporation domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(b) The owners of special deposit claims against a corporation for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharge therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid
(c) The owner of a secured claim against a corporation for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the corporation on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this article or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amounts shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

§33-24-27. Order of distribution.

The priority of distribution of claims from the corporation estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. No claim by a policyholder or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies. The order of distribution shall be:

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

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

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

(3) Any necessary filing fees;

(4) The fees and mileage payable to witnesses;

(5) Reasonable attorney's fees; and

(6) All expenses incurred by the department of
insurance arising out of the enforcement or chapter thirty-three and its regulations.
(b) Class II. Debts due to employees for compensation under the provision of section thirty-four of this article.
(c) Class III. All claims for refund of unearned premiums under nonassessable policies and all claims of policyholders including such claims of the federal or any state or local government for losses incurred and third party claims of an insolvent insurer.
(d) Class IV. Claims of general creditors including claims of ceding and assuming companies in their capacity as such.
(e) Class V. Claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subdivision (h) of this section.
(f) Class VI. Claims filed late or any other claims other than claims under subdivisions (g) and (h) of this section.
(g) Class VII. Surplus or contribution notes, or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual corporations shall be limited in accordance with law.
§33-24-28. Attachment, garnishment or execution.
During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this state against a delinquent corporation or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.
§33-24-29. Deposit of moneys collected.

1 The moneys collected by the commissioner in a proceeding under this article shall be from time to time deposited in one or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this state. The commissioner may in his discretion deposit such moneys or any part thereof in a national bank or 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 to any public officer in this state for filing, recording, issuing a transcript or certificate or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this article, whether or not such paper or instrument be executed by the commissioner or his deputies, employees or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the commissioner, or with the subsequent conduct of such action or proceeding.

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

1 For the purpose of facilitating the rehabilitation, liquidation, supervision, conservation or dissolution of a corporation pursuant to this article, the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property, whether real, personal or mixed, of such corporation, and the commissioner, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loan and to provide for the repayment thereof.
The commissioner shall be under no obligation personally or in his official capacity to repay any loan made pursuant to this section.

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

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

§33-24-33. Voidable transfers.

(a) Any transfer of, or lien upon, the property of a corporation which is made or created within four months prior to the granting of an order to show cause under this article with the intent of giving to any creditor or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such preference will occur, shall be voidable.

(b) Every director, officer, employee, member, subscriber, and any other person acting on behalf of such corporation who shall be concerned in any such act or deed and every person receiving thereby any property of such corporation or the benefit thereof shall be personally liable therefor and shall be bound to account to the insurance commissioner.

(c) The insurance commissioner as a receiver in any proceeding under this article may avoid any transfer of or lien upon the property of a corporation which any creditor, subscriber or member of such corporation might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the granting of an order to show cause under this article. Such property or its value may be recovered from anyone who has received
§33-24-34. Priority of claims for compensation.

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

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

§33-24-35. Offsets.

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

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

§33-24-36. Allowance of claims.

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

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

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

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

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

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

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

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

(2) A claim by a third party founded upon a policy
may be allowed without requiring such claim to be reduced to judgment, provided it can be reasonably inferred from the proof presented that the claimant would be able to obtain a judgment upon his cause of action against the member and that such judgment would represent a liability of the corporation in liquidation under the policy upon which such claim is founded.

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

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

(f) Unless such claim is filed in the manner and within the time provided in section twenty-five, it shall not be entitled to filing or allowance, and no action may be maintained thereon. In the liquidation, pursuant to the provisions of this article, of any domestic corporation
which has issued policies insuring the lives of persons, the commissioner shall, within thirty days after the last day set for the filing of claims, make a list of the persons who have not filed proofs of claim with him and to whom, according to the books of said insurer, there are amounts owing under such policies, and he shall set opposite the name of each such person the amount so owing to such person. Each person whose name shall appear upon said list shall be deemed to have duly filed, prior to the last day set for the filing of claims, a claim for the amount set opposite his name on said list.

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

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

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

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

(B) The delivery to him of all the documents giving rise to such debt.
(2) The commissioner may determine whether or not it will be feasible to attempt to collect any such assigned debt. If he determines not to pursue collection of any such debt, he shall file a declaration to that effect with the liquidation court and be relieved of any further responsibility in respect to such debt.

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

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

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

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

§33-24-38. Assessment.

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

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

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

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

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

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


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

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

All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, member or other person who is unknown or cannot be found, shall be deposited with the
state treasurer, and shall be paid without interest to the
person entitled thereto or his legal representative upon
proof satisfactory to the state treasurer of his right
thereto. Any amount on deposit not claimed within six
years from the discharge of the liquidator shall be
deemed to have been abandoned and shall be escheated
to the state of West Virginia without formal escheat
proceedings and be deposited with the general fund.

§33-24-42. Immunity in receivership proceedings.
(a) No claim of any nature whatsoever that is directly
related to the receivership of a corporation shall rise
against, and no liability shall be imposed upon, the
insurance commissioner, special deputy commissioner,
or any person or entity acting as a receiver of a
corporation, including surety, in rehabilitation, liquida-
tion, supervision or conservation as a result of a court
order issued on or after the first day of January, one
thousand nine hundred eighty-five for any statement
made or actions taken or not taken in the good faith
exercise of their powers under law. However, this
immunity shall not extend to acts or omissions which are
malicious or grossly negligent. This qualified immunity
extends to agents and employees of the receiver.

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

ARTICLE 25. HEALTH CARE CORPORATIONS.
§33-25-19. Administrative supervision.
Every health care corporation subject to the provi-
sions of this article is subject to the provisions of article
thirty-four of this chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.
Every health maintenance organization subject to the
provisions of this article is subject to the provisions of
article thirty-four of this chapter.
ARTICLE 31. CAPTIVE INSURANCE.

§33-31-6. Corporate organization.

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

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

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

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

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

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

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

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

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

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

6. (f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.
(g) At least one of the members of the board of directors of a captive insurance company incorporated in this state shall be a resident of this state.

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

ARTICLE 32. RISK RETENTION ACT.

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

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

ARTICLE 34. ADMINISTRATIVE SUPERVISION.

§33-34-1. Definitions.

For the purposes of this article the following definitions shall apply:

(a) "Insurer" means and includes every person engaged as indemnitor, surety or contractor in the
business of entering into contracts of insurance or of annuities as limited to:

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

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

(b) “Exceeded its powers” means the following conditions:

(1) The insurer has refused to permit examination of its books, papers, accounts, records or affairs by the commissioner, his deputy, employees, or duly commissioned examiners;

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

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

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

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

(6) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner
or has without first having obtained written approval of
the commissioner if approval is required by law;
(A) Totally reinsured its entire outstanding business;
or
(B) Merged or consolidated substantially its entire
property or business with another insurer.
(7) The insurer engaged in any transaction in which
it is not authorized to engage under the laws of this
state; or
(8) The insurer refused to comply with a lawful order
of the commissioner.
(c) "Consent" means agreement to administrative
supervision by the insurer.
The provisions of this article shall only apply to:
(a) All domestic insurers; and
(b) Any other insurer doing business in this state
whose state of domicile has asked the commissioner to
apply the provisions of this article as regards such
insurer.
§33-34-3. Notice to comply with written requirements of
commissioner, noncompliance and adminis-
trative supervision.
(a) An insurer may be subject to administrative
supervision by the commissioner if upon examination or
at any other time it appears in the commissioner's
discretion that:
(1) The insurer's condition renders the continuance of
its business hazardous to the public or to its insureds;
(2) The insurer has or appears to have exceeded its
powers granted under its certificate of authority and
applicable law;
(3) The insurer has failed to comply with the appli-
cable provisions of the insurance code;
(4) The business of the insurer is being conducted
(5) The insurer gives its consent.

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

(1) Notify the insurer of his determination;

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

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

(c) If placed under administrative supervision, within sixty days the insurer shall comply with the requirements of the commissioner subject to the provisions of this article.

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

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

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

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

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

An insurer may not engage in the following actions
during the period of supervision, without the prior
approval of the commissioner or his or her special
deputy supervisor:

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

(2) Withdraw any of its bank accounts;

(3) Lend any of its funds;

(4) Invest any of its funds;

(5) Transfer any of its property;

(6) Incur any debt, obligation or liability;

(7) Merge or consolidate with another company;

(8) Approve new premiums or renew any policies;

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

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

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

(12) Make any material change in management; or

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

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

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

§33-34-7. Rules.
The department is empowered to adopt reasonable rules pursuant to chapter twenty-nine-a of this code deemed necessary for the implementation of this article.

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

Notwithstanding any other provision of this code to the contrary, the commissioner may meet with a special deputy supervisor appointed under this article and with the attorney or other representative of the special deputy supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this article to carry out the commissioner’s responsibilities as provided in this article or for the special deputy supervisor to carry out his or her duties as provided in this article.

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

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

(2) Each insurer which is subject to administrative supervision by the department shall pay to the department the expenses of its administrative supervision at the rates established by the department. Expenses shall include actual travel expenses, a reasonable living expense allowance, compensation of the special deputy supervisor or other persons employed or appointed by the department for purposes of the supervision, and necessary attendant administrative cost of the department directly related to the supervision. The travel expense and living expense allowance shall be limited to those expenses necessarily incurred in the performance of official duties relating to the administrative supervision and shall be paid by the insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the
special deputy supervisor or other person employed or appointed by the department and approved by the department.

(3) All moneys collected from insurers for the expenses of administrative supervision shall be deposited into an account created in the state treasury designated the “Insurance Commissioner's Regulatory Trust Fund”, and the department is authorized to make deposits when required into this fund from moneys collected in the commissioner's “Operating-Add'l Fees” account.

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

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

§33-34-10. Immunity.

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


In the event any part or provision of this article be held to be unconstitutional by any court of competent jurisdiction, such holding and decision of the court shall not affect the validity and constitutionality of the
remaining parts and provisions of this article.

ARTICLE 35. CRIMINAL SANCTIONS FOR FAILURE TO REPORT IMPAIRMENT.

§33-35-1. Definitions.

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

(a) “Insurer” means any insurance company or other insurer licensed to do business in this state. This includes, but is not limited to, any domestic insurer as defined in section six, article one of this chapter and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers’ mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, dental service corporation, health service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group.

(b) “Impaired” means a financial situation in which, based upon the requirements of this chapter for the preparation of the insurer’s annual statement, the insurer’s assets are less than the insurer’s liabilities and the required reserves together with the insurer’s minimum required capital and minimum required surplus as required by this chapter to be maintained to transact the type of business for which the insurer is authorized by this chapter to transact.

(c) “Chief executive officer” means the person, irrespective of their title, designated by the board of directors or board of trustees or other similar governing body of an insurer as the person charged with the responsibility and authority of administering and implementing the insurer’s policies and procedures.


(a) Whenever an insurer is impaired, its chief executive officer shall immediately notify the commissioner in writing of such impairment and shall also immediately notify in writing all of the members of the board of directors, board of trustees or other similar
governing body of the insurer.

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


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

(b) Any person who knowingly:

(1) Conceals any property belonging to an insurer;

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

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

(4) Gives, obtains or receives a thing of value for acting or forbearing to act in any court proceeding; and any such act results in or contributes to an insurer becoming impaired or insolvent, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than five years.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick X. Harper
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Clare L. Holton
Clerk of the Senate

Donald J. Hopkins
Clerk of the House of Delegates

Kathy Strumila
President of the Senate

Rick W. Escool
Speaker of the House of Delegates

The within is approved this the day of March 1990.

Martin J. O'Malley
Governor