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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

Com. Sub. for
HOUSE BILL No. *2462*

(By Mr. *Speaker Mr. Chambers, and*
Delegate Burk)
By Request of the Executive

Passed *March 9,* 1991

In Effect *From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2462

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE R. BURK)
[By Request of the Executive]

[Passed March 9, 1991; in effect from passage.]

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

said article twenty-five by adding thereto a new section, designated section twenty; to amend and reenact sections two, four, nine, seventeen and twenty-four, article twenty-five-a; to further amend said article twenty-five-a by adding thereto a new section, designated section thirty-one; to amend and reenact sections three and eight, article twenty-six-a; section five, article twenty-seven; section eight, article thirty-one; section eight, article thirty-two; and section seven, article thirty-three, all of said chapter thirty-three; and to further amend chapter thirty-three by adding thereto a new article, designated article thirty-four-a, all relating to insurance; salary of the insurance commissioner; reimbursement for educational and training expenses of employees of insurance commissioner; examination of insurers, agents, brokers and solicitors; annual fee; special accounts; access to books, records, etc.; capital and surplus requirements; general provisions; annual statement by insurer; reinsurance; limit of risk, domesticity to comply with reciprocal state laws; insurance policy; scope of article; assets and liabilities; valuation of real property; investments; limitation of investments in one person; government obligations; real property mortgages; rehabilitation and liquidation; definitions; accident and sickness rates, rates and rating organizations and rate making and authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results; definitions; 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 and health service corporations, exemptions; applicability of insurance laws; licenses; name of corporation; commissioner to enforce article; approval of contracts, forms, rates and fees; investments; bonds of corporate officers and employees; minimum statutory surplus; definitions; commencement of delinquency proceeding; ex parte orders, injunctions and other orders; grounds for liquidation; authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results; health care corporations, definitions;

supervision and regulation by insurance commissioner; exemption from insurance laws; licenses; annual report; authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results; health maintenance organization act, definitions; issuance of certificate of authority; annual report; examinations; statutory construction and relationship to other laws; authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results; West Virginia life and health insurance and health insurance guaranty association act, scope of article; powers and duties of association; insurance holding company systems; standards; consolidated or combined audits; captive insurance; examinations and investigations; risk retention; examination regarding financial condition; standards and commissioner's authority for companies deemed to be in hazardous financial condition, definitions; purpose; standards; commissioner's authority; election of proceedings; immunity from liability; rules and severability of provisions.

Be it enacted by the Legislature of West Virginia:

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

forty-three; that sections two, six, seven and nine, article twenty-five be amended and reenacted; that said article twenty-five be further amended by adding thereto a new section, designated section twenty; that sections two, four, nine, seventeen and twenty-four, article twenty-five-a be amended and reenacted; that said article twenty-five-a be further amended by adding thereto a new section, designated section thirty-one; that sections three and eight, article twenty-six-a; section five, article twenty-seven, section eight, article thirty-one, section eight, article thirty-two and section seven, article thirty-three, all of said chapter thirty-three, be amended and reenacted; and that said chapter thirty-three be further amended by adding thereto a new article, designated article thirty-four-a, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-2. Compensation and expenses of commissioner and employees; location of office.

1 The commissioner shall receive an annual salary of
2 forty-seven thousand eight hundred dollars and actual
3 expenses incurred in the performance of official
4 business, which compensation shall be in full for all
5 services. The office of the commissioner shall be
6 maintained in the capitol or other suitable place in
7 Charleston. The commissioner may employ such persons
8 and incur such expenses as may be necessary in the
9 discharge of his duties and shall fix the compensation
10 of such employees, but such compensation shall not
11 exceed the appropriation therefor. The commissioner
12 may reimburse employees for reasonable expenses
13 incurred for job-related training and educational
14 seminars and courses. All compensation for salaries and
15 expenses of the commissioner and his employees shall be
16 paid monthly out of the state treasury by requisition
17 upon the auditor, properly certified by the commis-
18 sioner.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

1 (a) The commissioner, his deputies, other employees or

2 his accredited examiners shall, at such times as he
3 deems necessary, but at least once every three years,
4 visit each domestic insurer and thoroughly examine its
5 financial condition and methods of doing business and
6 ascertain whether it has complied with all the laws and
7 regulations of this state. The commissioner at such times
8 as he deems necessary may cause an examination to be
9 conducted of any foreign or alien insurer licensed to
10 transact insurance in this state. The commissioner may
11 examine the affairs of any insurer applying for a license
12 to transact any insurance business in this state.
13 Personnel conducting such examinations of either a
14 domestic, foreign or alien insurer shall be compensated
15 for each day worked at a rate set by the commissioner.
16 Such personnel shall also be reimbursed for their travel
17 and living expenses at the rate set by the commissioner.
18 The commissioner may, at his sole discretion as he
19 deems necessary, appoint other individuals who are not
20 employees of the department of insurance to conduct or
21 participate in such examinations. Such individuals shall
22 include, but not be limited to independent certified
23 public accountants, independent actuaries, qualified
24 insurance examiners or other individuals with particu-
25 lar skills or areas of expertise deemed competent by the
26 insurance commissioner, or any combination of the
27 foregoing. Such personnel who are not employees of the
28 department of insurance shall all be compensated for
29 their work, travel and living expenses at rates approved
30 by the commissioner, or as otherwise provided by law.
31 As used in this section the costs of an examination shall
32 mean: (1) The entire compensation for each day worked
33 by all personnel, including those who are not employees
34 of the department of insurance, the conduct of such
35 examination calculated as hereinbefore provided; (2)
36 travel and living expenses of all personnel, including
37 those who are not employees of the department of
38 insurance, directly engaged in the conduct of such
39 examination, calculated at the rates as hereinbefore
40 provided for; (3) all other incidental expenses incurred
41 by or on behalf of such personnel in the conduct of such
42 authorized examination. All insurers subject to the
43 provisions of this section of the code shall annually pay

44 to the commissioner on or before the first day of July,
45 one thousand nine hundred ninety-one and every first
46 day of July thereafter an examination assessment fee of
47 eight hundred dollars. Four hundred and fifty dollars
48 of this fee shall be paid to the treasurer of the state to
49 the credit of a special revolving fund to be known as the
50 "Commissioner's Examination Revolving Fund" which
51 is hereby established and three hundred and fifty
52 dollars shall be paid to the treasurer of the state. The
53 commissioner may at his discretion, upon notice to the
54 insurers subject to this section, increase this examina-
55 tion assessment fee or levy an additional examination
56 assessment fee of two hundred fifty dollars. In no event
57 shall the total examination assessment fee including any
58 additional examination assessment fee levied exceed one
59 thousand five hundred dollars per insurer in any
60 calendar year. The moneys collected by the commis-
61 sioner from an increase or additional examination
62 assessment fee shall be paid to the treasurer of the state
63 to be credited to the "Commissioner's Examination
64 Revolving Fund". Any funds expended or obligated by
65 the commissioner from the "Commissioner's Examina-
66 tion Revolving Fund" shall be expended or obligated
67 solely for defrayment of the costs of examinations of the
68 financial affairs of insurance companies made by the
69 commissioner pursuant to this section or for the
70 purchase of equipment and supplies, travel, education
71 and training for his deputies, other employees and
72 accredited examiners necessary for the commissioner to
73 fulfill the statutory obligations created by this section.
74 The commissioner may at his discretion require other
75 individuals who are not employees of the department of
76 insurance who have been appointed by the commissioner
77 to conduct or participate in the examination of insurers
78 to bill and receive payments directly from insurers
79 being examined for their work, travel and living
80 expenses as previously provided for in this section. For
81 purposes of this section, "insurance company" includes
82 any domestic or foreign stock company, mutual com-
83 pany, mutual protective association, farmers mutual fire
84 companies, fraternal benefit society, reciprocal or inter-
85 insurance exchange, nonprofit medical care corporation,

86 nonprofit health care corporation, nonprofit hospital
87 service association, nonprofit dental care corporation,
88 health maintenance organization, captive insurance
89 company, risk retention group or other insurer, regard-
90 less of the type of coverage written, benefits provided,
91 or guarantees made by each. The commissioner shall
92 make a full written report of each such examination of
93 an insurer, certified to by the commissioner or the
94 examiner in charge of such examination. The commis-
95 sioner shall furnish a copy of the report to the insurer
96 examined not less than ten days prior to filing the same
97 in his office. If such insurer so requests in writing,
98 within such ten-day period, the commissioner shall
99 consider the objections of such insurer to the report as
100 proposed, and shall not so file the report until after such
101 modifications, if any, have been made therein as the
102 commissioner deems proper. The report, when filed,
103 shall be admissible in evidence in any action or
104 proceeding brought by the commissioner against the
105 insurer examined, or its officers or agents, and shall be
106 prima facie evidence of the facts stated therein. The
107 commissioner or his examiners may at any time testify
108 and offer other proper evidence as to information
109 secured during the course of an examination, whether
110 or not a written report of the examination has at that
111 time been either made, served or filed in the commis-
112 sioner's office. The examination of an alien insurer shall
113 be limited to its United States business. In lieu of
114 making his own examination, the commissioner may
115 accept a full report of the last recent examination of a
116 foreign or alien insurer, certified to by the insurance
117 supervisory official of the state of domicile of a foreign
118 insurer or the state of entry into the United States of
119 an alien insurer.

120 (b) The commissioner may also cause to be examined
121 at such times as he deems necessary the books, records,
122 papers, documents, correspondence and methods of
123 doing business of any agent, broker or solicitor licensed
124 by this state.

125 (c) For such purposes the commissioner, his deputies
126 and employees shall have free access to all books,

127 records, papers, documents and correspondence of all
128 such insurers (whether domestic, foreign or alien),
129 agents, brokers and solicitors wherever such books,
130 records, papers, documents and records are situate.

131 (d) The commissioner may revoke the license of any
132 such insurer, agent, broker or solicitor who refuses to
133 submit to such examination.

134 (e) The commissioner may withhold from public
135 inspection any examination or investigation report for
136 such time as he may deem prudent, but no such report
137 shall be withheld from public inspection for longer than
138 ninety days after the same has been filed.

139 (f) In addition to conducting an examination, the
140 commissioner, his deputies, other employees or other
141 individuals appointed by the commissioner who are not
142 employees of the department of insurance, may as the
143 commissioner deems necessary analyze or review any
144 phase of the operations or methods of doing business of
145 an insurer, agent, broker, solicitor or other individual
146 or corporation transacting or attempting to transact an
147 insurance business in the state of West Virginia. The
148 commissioner may use the full resources provided by
149 this section in carrying out these responsibilities,
150 including such personnel and equipment provided by
151 this section as the commissioner deems necessary.

§33-3-5b. Capital and surplus requirements.

1 No insurer shall hereafter be licensed to transact the
2 business of insurance in the state of West Virginia
3 unless it has fully paid in capital stock, if a stock
4 insurer, or surplus, if a mutual insurer, of at least one
5 million dollars. In addition, each such insurer shall have
6 and maintain additional surplus funds of at least one
7 million dollars: *Provided*, That insurers duly licensed to
8 transact insurance in West Virginia prior to the
9 effective date of this section whose capital and surplus
10 requirements are increased by virtue of this section
11 shall have until the first day of January, one thousand
12 nine hundred ninety-three, to meet such increased
13 requirements. Such capital and surplus shall be unen-
14 cumbered.

ARTICLE 4. GENERAL PROVISIONS.**§33-4-14. Annual statement by insurer.**

1 (a) Each licensed insurer shall annually on or before
2 March first unless the time is extended by the commis-
3 sioner for good cause shown, file with the commissioner
4 a true statement of its financial condition, transactions
5 and affairs as of the December thirty-first preceding;
6 said statement shall be on the appropriate national
7 association of insurance commissioners annual state-
8 ment blank which should be prepared in accordance
9 with the national association of insurance commissioners
10 annual statement instructions handbook and follow the
11 accounting practices and procedures prescribed by the
12 national association of insurance commissioners account-
13 ing practices and procedures manual as amended. The
14 commissioner may require that all or part of the
15 information contained in the annual statement blank be
16 submitted to the department in a computer-readable
17 form compatible with the electronic data processing
18 system of the department. The statement of an alien
19 insurer shall relate only to its transactions and affairs
20 in the United States unless the commissioner requires
21 otherwise.

22 (b) Each domestic, foreign and alien insurer, organ-
23 ization or corporation who is subject to the requirements
24 of this section shall annually on or before the first day
25 of March each year, file with the national association of
26 insurance commissioners, and pay the fee established by
27 the national association of insurance commissioners for
28 filing, review or processing of the information, a copy
29 of its annual statement convention blank, along with
30 such additional filings as prescribed by the commis-
31 sioner for the preceding year. The information filed with
32 the national association of insurance commissioners
33 shall be in the same format and scope as that required
34 by the commissioner and shall include the signed jurat
35 page and any other required information. Any amend-
36 ments and addenda to the annual statement filing
37 subsequently filed with the commissioner shall also be
38 filed with the national association of insurance
39 commissioners.

40 (c) Foreign insurers that are domiciled in a state
41 which has a law substantially similar to subsection (a)
42 of this section shall be deemed in compliance with this
43 section.

44 (d) In the absence of actual malice, members of the
45 national association of insurance commissioners, their
46 duly authorized committees, subcommittees, and task
47 forces, their delegates, national association of insurance
48 commissioners employees, and all others charged with
49 the responsibility of collecting, reviewing, analyzing and
50 disseminating the information developed from the filing
51 of the annual statement convention blanks shall be
52 acting as agents of the commissioner under the author-
53 ity of this act and shall not be subject to civil liability
54 for libel, slander or any other cause of action by virtue
55 of their collection, review, and analysis or dissemination
56 of the data and information collected from the filings
57 required hereunder.

58 (e) All financial analysis ratios and examination
59 synopses concerning insurance companies that are
60 submitted to the department by the national association
61 of insurance commissioners insurance regulatory
62 information system are confidential and may not be
63 disclosed by the department.

64 (f) The commissioner may suspend, revoke or refuse
65 to renew the certificate of authority of any insurer
66 failing to file its annual statement when due or within
67 any extension of time which the commissioner, for good
68 cause, may have granted.

69 (g) Any variance to the requirements of this section
70 shall require the express authorization of the
71 commissioner.

72 (h) The commissioner pursuant to chapter twenty-
73 nine-a may promulgate rules and regulations to effec-
74 tuate the requirements of this article.

§33-4-15. Reinsurance.

1 (a) An insurer shall reinsure its risks, or any part
2 thereof, only in solvent insurers having surplus to
3 policyholders not less in amount than the paid-in capital

4 required under this chapter of a stock insurer licensed
5 to transact like kinds of insurance.

6 (b) An insurer shall so reinsure in such alien insurers
7 only as are authorized to transact insurance in at least
8 one state of the United States or have in the United
9 States a duly authorized attorney-in-fact to accept
10 service of legal process against the insurer as to any
11 liability which might arise on account of such
12 reinsurance.

13 (c) No credit shall be allowed, as an asset or as a
14 deduction from liability, to any ceding insurer for
15 reinsurance unless the reinsurance is in insurers either
16 licensed in West Virginia to transact insurance of the
17 kind being reinsured or which have been approved by
18 the commissioner in writing; nor unless the reinsurance
19 is payable by the assuming insurer on the basis of the
20 liability of the ceding insurer under the contracts
21 reinsured without diminution because of the insolvency
22 of the ceding insurer nor unless under the reinsurance
23 contract the liability for such reinsurance is assumed by
24 the assuming insurer or insurers as of the same effective
25 date.

26 (d) Any licensed insurer may accept reinsurance for
27 the same kinds of insurance and within the same limits
28 as it is authorized to transact direct insurance.

29 (e) No insurer shall reinsure all or substantially all of
30 its risks on property or lives located in West Virginia,
31 or substantially all of a major class thereof, unless the
32 reinsurance agreement be filed with and approved by
33 the commissioner.

§33-4-16. Limit of risk.

1 (a) No insurer shall retain any risk on any one subject
2 of insurance, whether located or to be performed in
3 West Virginia or elsewhere, in an amount exceeding ten
4 percent of its surplus to policyholders.

5 (b) A "subject of insurance" for the purpose of this
6 section, as to insurance against fire and hazards other
7 than windstorm or earthquake, includes all properties
8 insured by the same insurer which are customarily

9 considered by insurers to be subject to loss or damage
10 from the same fire or other such hazard insured against.

11 (c) Reinsurance in licensed or approved insurers as
12 authorized by section fifteen of this article shall be
13 deducted in determining risk retained. As to surety risk,
14 deduction shall also be made of the amount assumed by
15 any established incorporated cosurety and the value and
16 security deposited, pledged or held subject to the
17 surety's consent and for the surety's protection.

18 (d) "Surplus to policyholders" for the purpose of this
19 section shall be deemed to include any voluntary
20 reserves which are not required pursuant to law, and
21 shall be determined from the last sworn statement of the
22 insurer on file with the commissioner or by the last
23 report of examination by the commissioner, whichever
24 is the more recent at time of assumption of such risk.

25 (e) As to alien insurers this section shall apply only
26 to risks and surplus to policyholders of the insurer's
27 United States branch.

28 (f) This section shall not apply to life or accident and
29 sickness insurance, title insurance, nor to any policy or
30 type of coverage as to which the maximum possible loss
31 to the insurer is not reasonably ascertainable on
32 issuance of the policy.

§33-4-19. Domestic to comply with reciprocal state laws.

1 No domestic insurer shall transact insurance in any
2 "reciprocal state" in which it is not then duly and
3 properly licensed to transact insurance.

4 (a) A reciprocal state, as used herein, shall mean a
5 state which has in effect a similar prohibition against
6 insurers domiciled in that state.

7 (b) This section shall not apply to:

8 (1) Contracts entered into where the prospective
9 insurant is personally present in the state in which the
10 insurer is authorized to transact insurance when they
11 sign the application.

12 (2) The issuance of certificates under a lawfully

13 transacted group life or group disability policy, where
14 the master policy was entered into a state in which the
15 insurer was then authorized to transact insurance.

16 (3) Insurance covering persons or risks located in a
17 reciprocal state, under contracts solicited and issued in
18 states in which the insurer is then licensed. Nor shall
19 it prohibit insurance effectuated by the insurer as an
20 unauthorized insurer in accordance with the laws of the
21 reciprocal state.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-1. Scope of article.

1 This article shall not apply to reinsurance.

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-12. Valuation of real property.

1 (a) In the event of a default real property acquired
2 pursuant to a mortgage loan or contract for sale, in the
3 absence of a recent appraisal as prescribed in subsection
4 (b) of this section twelve, shall not be valued at an
5 amount greater than the unpaid principal of the
6 defaulted loan or contract at the date of such acquisition,
7 together with any taxes and expenses paid or incurred
8 in connection with such acquisition, and the cost of
9 improvements thereafter made by the insurer and any
10 amounts thereafter paid by the insurer on assessments
11 levied for improvements in connection with the
12 property.

13 (b) The value of other real property acquired or held
14 by an insurer, shall be subject to the approval of the
15 commissioner. The commissioner may, at his discretion
16 at the time such investment is made, or at any time,
17 cause any such real property to be appraised by a
18 licensed real estate appraiser, subject to the Real Estate
19 Appraiser Licensing and Certification Act pursuant to
20 article fourteen, chapter thirty-seven, appointed or
21 approved by the commissioner, and the reasonable
22 expense of such appraisal shall be paid by the insurer.
23 No insurer may hereafter make any increase in the
24 valuation of any real properties unless and until such

25 increased valuation shall be likewise approved by the
26 commissioner.

ARTICLE 8. INVESTMENTS.

§33-8-5. Limitation of investments in one person.

1 An insurer shall not, except with the consent of the
2 commissioner, have at one time any combination of
3 investments in or loans upon the security of the
4 obligations, property, or securities of any one person,
5 institution or corporation, aggregating an amount
6 exceeding five percent of the insurer's assets. This
7 restriction shall not apply to investments in or loans
8 upon the security of general obligations of the United
9 States or fully guaranteed by the United States or the
10 District of Columbia or any state of the United States
11 or of political subdivisions of the state of West Virginia
12 or other states of the United States, made pursuant to
13 section seven of this article, or include policy loans made
14 under section nineteen of this article or investments in
15 foreign securities pursuant to section eight of this
16 article. Pursuant to section 106(b) of the "Secondary
17 Mortgage Market Enhancement Act of 1984," an act of
18 the Congress of the United States, this section prohibits
19 domestic insurers from exercising the investment
20 authority granted any person, trust, corporation,
21 partnership, association, business trust or business
22 entity pursuant to section 106(a) (1) or (2) of that act.

§33-8-7. Government obligations.

1 An insurer may invest any of its funds in:
2 (a) Bonds or securities which are the direct obligation
3 of or which are secured or guaranteed in whole or in
4 part as to principal and interest by the United States,
5 any state or territory of the United States or the District
6 of Columbia, where there exists the power to levy taxes
7 for the prompt payment of the principal and interest of
8 such bonds or evidences of indebtedness, and, in bonds
9 issued by the federal land banks or securities issued by
10 the federal home loan bank system. Pursuant to section
11 106(b) of the "Secondary Mortgage Market Enhance-
12 ment Act of 1984," an act of the Congress of the United

13 States, this section prohibits domestic insurers from
14 exercising the investment authority granted any person,
15 trust, corporation, partnership, association, business
16 trust or business entity pursuant to section 106(a) (1) or
17 (2) of that act.

18 (b) Bonds or evidences of indebtedness which are
19 direct general obligations of any county, district, city,
20 town, village, school district, park district or other
21 political subdivision of this state or any other state or
22 territory of the United States or the District of
23 Columbia, which shall not be in default in the payment
24 of any of its general obligation bonds, either principal
25 or interest, at the date of such investment; where they
26 are payable from ad valorem taxes levied on all the
27 taxable property located therein and the total indebted-
28 ness after deducting sinking funds and all debts
29 incurred for self-sustaining public works does not
30 exceed ten per centum of the actual value of all taxable
31 property therein on the basis of which the last assess-
32 ment was made before the date of such investment.

§33-8-15. Real property mortgages.

1 (a) An insurer may invest in entire first mortgages on
2 improved unencumbered real estate or the entire issue
3 of bonds secured thereby located within any state worth
4 at least thirty-three and one third per centum more than
5 the amount loaned thereon, based on sound appraisal by
6 a competent appraiser and duly certified by him,
7 provided that the investment in any one mortgage or
8 any one issue of bonds or any one contract for deed does
9 not exceed twenty-five thousand dollars or two per
10 centum of the insurer's assets, whichever is the greater.

11 (b) "Improved real estate," as used in this section,
12 means all farm land which has been reclaimed and is
13 used for the purpose of husbandry, whether for tillage
14 or pasture, and all real property on which permanent
15 buildings suitable for residence or commercial use are
16 situated.

17 (c) Real property shall not be deemed to be encum-
18 bered within the meaning of this section by reason of
19 the existence of instruments reserving or excepting

20 mineral rights and interests, rights-of-way, sewer rights
21 and rights in walls or easements, nor by reason of
22 building restrictions or other restrictive covenants, nor
23 by reason of the fact that it is subject to lease under
24 which rents or profits are reserved to the owners:
25 *Provided*, That the security for such investment is a full
26 and unrestricted first lien upon such real property and
27 that there is no condition nor right of re-entry or
28 forfeiture under which such investments can be cut off,
29 subordinated or otherwise disturbed.

30 (d) Notwithstanding the restrictions set forth in this
31 section any insurer may invest (1) in bonds or notes
32 secured by mortgage or trust deed insured by the
33 federal housing administration or in debentures issued
34 by it under the terms of an act of Congress of the United
35 States entitled the "National Housing Act," as heretofore
36 or hereafter amended and (2) in securities issued by
37 national mortgage associations established by or under
38 the authority of the National Housing Act, and (3) in
39 bonds or notes secured by mortgage or trust deed
40 guaranteed as to principal by the administrator of
41 veterans' affairs pursuant to the provisions of Title III
42 of an act of Congress of the United States as of June
43 twenty-two, one thousand nine hundred forty-four,
44 entitled the "Servicemen's Re-Adjustment Act of one
45 thousand nine hundred forty-four," as heretofore or
46 hereafter amended. Pursuant to section 106(b) of the
47 "Secondary Mortgage Market Enhancement Act of
48 1984," an act of the Congress of the United States, this
49 section prohibits domestic insurers from exercising the
50 investment authority granted any person, trust, corpo-
51 ration, partnership, association, business trust or
52 business entity pursuant to section 106(a) (1) or (2) of
53 that act.

54 (e) Notwithstanding the restrictions herein set forth
55 the amount of any first mortgage investment as limited
56 by subsection (a) of this section may be exceeded if and
57 to the extent that such excess shall be guaranteed by the
58 administrator of veterans' affairs pursuant to the
59 provisions of Title III of an act of Congress of the United
60 States of June twenty-two, one thousand nine hundred

61 forty-four, entitled the "Servicemen's Re-Adjustment
62 Act of one thousand nine hundred forty-four," as
63 heretofore or hereafter amended. Pursuant to section
64 106(b) of the "Secondary Mortgage Market Enhance-
65 ment Act of 1984," an act of the Congress of the United
66 States, this section prohibits domestic insurers from
67 exercising the investment authority granted any person,
68 trust, corporation, partnership, association, business
69 trust or business entity pursuant to section 106(a) (1) or
70 (2) of that act.

71 (f) No such insurer shall in any manner, either
72 directly or indirectly, by means of corporations, holding
73 companies, trustees or otherwise, invest in real estate
74 securities junior to first mortgages unless the first
75 mortgage in its entirety is owned by the insurer.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-1. Definitions.

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

3 (a) "Impairment" means a financial situation in which,
4 based upon the financial information which would be
5 required by this chapter for the preparation of the
6 insurer's annual statement, the assets of an insurer are
7 less than the sum of all of its liabilities and required
8 reserves including any minimum capital and surplus
9 required of that insurer by this chapter so as to
10 maintain its authority to transact the kinds of business
11 or insurance it is so authorized to transact.

12 (b) "Insolvency" means a financial situation in which,
13 based upon the financial information which would be
14 required by this chapter for the preparation of the
15 insurer's annual statement, the assets of the insurer are
16 less than the sum of all of its liabilities and required
17 reserves.

18 (c) "Insurer" means any person, firm, corporation,
19 association or aggregation of persons doing an insurance
20 business and which is or has been subject to the
21 insurance supervisory authority of, or to liquidation,
22 rehabilitation, reorganization or conservation by the

23 commissioner or the equivalent insurance supervisory
24 official of another state.

25 (d) "Delinquency proceeding" means any proceeding
26 commenced against an insurer pursuant to this article
27 for the purpose of liquidating, rehabilitating, reorgan-
28 izing or conserving such insurer.

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

31 (f) "Foreign country" means any other jurisdiction not
32 in any state.

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

43 (h) "Ancillary state" means any state other than a
44 domiciliary state.

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

52 (j) "General assets" means all property, real, personal
53 or otherwise, not specifically mortgaged, pledged,
54 deposited or otherwise encumbered for the security or
55 benefit of specified persons or a limited class or classes
56 of persons, and as to such specifically encumbered
57 property the term includes all such property or its
58 proceeds in excess of the amount necessary to discharge
59 the sum or sums secured thereby. Assets held in trust
60 and assets held on deposit for the security or benefit of
61 all policyholders or all policyholders and creditors in

62 more than a single state shall be deemed general assets.

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

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

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

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

80 (o) "Guaranty association" means the West Virginia
81 Insurance Guaranty Association created by article
82 twenty-six of this chapter, the West Virginia Life and
83 Health Insurance Guaranty Association Act created by
84 article twenty-six-a of this chapter, and any other
85 similar entity now or hereafter created by the Legisla-
86 ture of this state for the payment of claims of insolvent
87 insurers.

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

ARTICLE 16B. ACCIDENT AND SICKNESS RATES.

§33-16B-4. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-

6 ies in the rate making and solvency determination of
7 that insurer.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

**§33-20-20. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.**

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

ARTICLE 20B. RATE MAKING.

**§33-20B-8. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.**

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

**ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COM-
PANIES.**

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

1 Each company to the same extent such provisions are
2 applicable to domestic mutual insurers shall be gov-
3 erned by and be subject to the following articles of this
4 chapter: Article one (definitions), article two (insurance
5 commissioner), article four (general provisions) except
6 that section sixteen of article four shall not be applicable
7 thereto, article seven (assets and liabilities), article ten
8 (rehabilitation and liquidation) except that under the
9 provisions of section thirty-two of said article ten no
10 assessment shall be levied against any former member
11 of a farmers' mutual fire insurance company who is no
12 longer a member of the company at the time the order
13 to show cause was issued, article eleven (unfair practices

14 and frauds), article twelve (agents, brokers and solici-
 15 tors) except that the agents' license fee shall be five
 16 dollars, article twenty-six (West Virginia Insurance
 17 Guaranty Association Act), article thirty (mine subsi-
 18 dence insurance) except that under the provisions of
 19 section six, article thirty, a farmers' mutual insurance
 20 company shall have the option of offering mine subsi-
 21 dence coverage to all of its policyholders but shall not
 22 be required to do so, article thirty-three (annual audited
 23 financial report), article thirty-four (administrative
 24 supervision), article thirty-four-a (standards and com-
 25 missioner's authority for companies deemed to be in
 26 hazardous financial condition) and article thirty-five
 27 (criminal sanctions for failure to report impairment),
 28 but only to the extent these provisions are not inconsis-
 29 tent with the provisions of this article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

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

1 Every fraternal benefit society shall be governed and
 2 be subject, to the same extent as other insurers
 3 transacting like kinds of insurance, to the following
 4 articles of this chapter: Article one (definitions), article
 5 two (insurance commissioner), article four (general
 6 provisions), article six, section thirty (fee for form and
 7 rate filing), article seven (assets and liabilities), article
 8 ten (rehabilitation and liquidation), article eleven
 9 (unfair trade practices), article twelve (agents, brokers,
 10 solicitors and excess lines), article thirteen (life insur-
 11 ance), article fifteen-a (long-term care insurance),
 12 article twenty-seven (insurance holding company sys-
 13 tems), article thirty-three (annual audited financial
 14 report), article thirty-four (administrative supervision),
 15 article thirty-four-a (standards and commissioner's
 16 authority for companies deemed to be in hazardous
 17 financial condition) and article thirty-five (criminal
 18 sanctions for failure to report impairment).

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

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

1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are
5 applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions as hereinbelow indicated, of the following
9 articles of this chapter: Article two (insurance commis-
10 sioner), article four (general provisions) except that
11 section sixteen of article four shall not be applicable
12 thereto, article six, section thirty-four (fee for form and
13 rate filing), article six-c (guaranteed loss ratio), article
14 seven (assets and liabilities), article ten (rehabilitation
15 and liquidation), article eleven (unfair practices and
16 frauds), article twelve (agents, brokers and solicitors),
17 section fourteen, article fifteen (individual policies),
18 article fifteen-a (long-term care insurance), section
19 three-a, article sixteen (mental illness), section three-a,
20 article sixteen, (mental illness), section three-c, article
21 sixteen (group accident and sickness insurance), section
22 three-d, article sixteen (medicare supplement), section
23 three-f, article sixteen (treatment of temporomandibular
24 joint disorder and craniomandibular disorder), article
25 sixteen-c (small employer group policies), article
26 sixteen-d (marketing and rate practices for small
27 employers), article twenty-six-a (West Virginia life and
28 health insurance guaranty association act), after the
29 first day of October, one thousand nine hundred ninety-
30 one, article twenty-seven (insurance holding company
31 systems), article twenty-eight (individual accident and
32 sickness insurance minimum standards), article thirty-
33 three (annual audited financial report), article thirty-
34 four (administrative supervision), article thirty-four-a
35 (standards and commissioner's authority for companies
36 deemed to be in hazardous financial condition) and
37 article thirty-five (criminal sanctions for failure to
38 report impairment); and no other provision of this
39 chapter shall apply to such corporations unless specif-
40 ically made applicable by the provisions of this article.
41 If, however, any such corporation shall be converted into

42 a corporation organized for a pecuniary profit, or if it
 43 shall transact business without having obtained a license
 44 as required by section five of this article, it shall
 45 thereupon forfeit its right to these exemptions.

§33-24-5. Licenses; name of corporation.

1 (a) No such corporation shall enter into any contract
 2 with a subscriber until it has obtained from the
 3 commissioner a license as provided in this section.
 4 Application for a license shall be made on forms to be
 5 prescribed and furnished by the commissioner.

6 (b) The application shall be accompanied by a copy of
 7 the following documents: (1) Certificate of incorporation;
 8 (2) bylaws; (3) contracts between the corporation and
 9 participating hospitals, physicians, dentists or other
 10 health agencies; (4) proposed contracts to be issued to
 11 subscribers, setting forth the hospital, medical or dental
 12 service, to which subscribers are entitled, and the table
 13 of rates to be charged for such service; and (5) financial
 14 statement showing the amount of contributions paid, or
 15 agreed to be paid, to the corporation for working capital,
 16 the name or names of each contributor and the terms
 17 of each contribution.

18 (c) The commissioner shall, upon payment to him of
 19 a license fee of two hundred dollars, issue a license
 20 authorizing the corporation to transact business in this
 21 state in the area to be served by it, if he is satisfied (1)
 22 that the applicant is incorporated in this state under the
 23 provisions of article one, chapter thirty-one of this code,
 24 as a bona fide nonprofit corporation, (2) that the
 25 contracts between the corporation and participating
 26 hospitals, physicians, dentists and other health agencies
 27 contain all the terms required by section seven of this
 28 article, (3) that the working capital available to the
 29 corporation will be sufficient to pay all operating
 30 expenses, other than payment for hospital, medical or
 31 dental services, for a reasonable period after the
 32 issuance of the license, and (4) that the proposed plan
 33 will serve the best interests of all of the people of the
 34 area in which the corporation intends to operate,
 35 regardless of their race, color or economic status. Any

36 license so issued may be renewed annually upon
37 payment to the commissioner of a renewal fee of two
38 hundred dollars.

39 (d) The term of such license, renewal, refusal to
40 license, revocation, suspension or penalty in lieu thereof,
41 shall be governed by the provisions of sections eight,
42 nine, ten and eleven, article three of this chapter, in the
43 same manner that these sections are applicable to
44 insurers generally.

45 (e) No such corporation shall include in its name the
46 words "insurance," "casualty," "surety," "health and
47 accident," "accident and sickness," "mutual," or any
48 other words descriptive of the insurance business; nor
49 shall its name be so similar to that of any insurer which
50 was licensed to transact insurance in this state when
51 such corporation was formed, as to tend, in the opinion
52 of the commissioner, to confuse the public.

**§33-24-6. Commissioner to enforce article; approval of
contracts, forms, rates and fees.**

1 (a) It shall be the duty of the commissioner to enforce
2 the provisions of this article. If the commissioner finds
3 that a corporation is impaired, he may issue such orders
4 and otherwise require that the corporation take all
5 actions that in his judgment are necessary for the
6 corporation to cure the impairment. Failure of the
7 corporation to follow such orders and directions is
8 evidence that the management is incompetent and
9 grounds for an order of rehabilitation or liquidation, as
10 the commissioner deems appropriate.

11 (b) No such corporation shall deliver or issue for
12 delivery any subscriber's contract, changes in the terms
13 of such contract, application, rider or endorsement, until
14 a copy thereof and the rates pertaining thereto have
15 been filed with and approved by the commissioner. All
16 such forms filed with the commissioner shall be deemed
17 approved after the expiration of sixty days from the date
18 of such filing unless the commissioner shall have
19 disapproved the same, stating his reasons for such
20 disapproval in writing. Such forms may be used prior
21 to the expiration of such periods if written approval

22 thereof has been received from the commissioner.

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

31 (d) The commissioner shall pass upon the actuarial
32 soundness of the schedule of fees to be paid hospitals,
33 physicians, dentists and other health agencies.

**§33-24-10. Investments; bonds of corporate officers and
employees, minimum statutory surplus.**

1 (a) The funds of any such corporation shall be invested
2 only as follows:

3 (1) Fifty percent of such funds shall be in cash or
4 government securities of the type described in section
5 seven of article eight of this chapter.

6 (2) The balance of such funds may be in cash or
7 invested in the classes of investments described in the
8 following sections of article eight of this chapter: Section
9 nine (certificates of deposit of federally insured institu-
10 tions), section eleven (corporate obligations), section
11 twelve (building and savings and loan shares, interna-
12 tional bank), section thirteen (preferred or guaranteed
13 stock), section fourteen (common stock), section sixteen
14 (real property) and section eighteen (revenue bonds). All
15 such investments shall be subject to all the restrictions
16 and conditions contained in said article eight as
17 applying to similar investments of insurers generally.

18 (b) Every officer or employee of any such corporation,
19 who is entrusted with the handling of its funds, shall
20 furnish, in such amount as may with the approval of the
21 commissioner be fixed by the board of directors of the
22 corporation, a bond with corporate surety, conditioned
23 upon the faithful performance of all his duties.

24 (c) A corporation shall have and maintain statutory

25 surplus funds of at least two million dollars: *Provided*,
26 That any such corporation duly licensed under this
27 article in West Virginia prior to the effective date of this
28 section whose surplus requirements are increased by
29 virtue of this section shall be required to maintain
30 statutory surplus funds of at least five hundred thousand
31 dollars after the effective date of this section, and any
32 such corporation shall then be subject to the full two
33 million dollar statutory surplus requirement after the
34 first day of October, one thousand nine hundred ninety-
35 one.

§33-24-14. Definitions.

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

3 (a) "Impairment" means a financial situation in which,
4 based upon the financial information which would be
5 required by this chapter for the preparation of the
6 corporation's annual statement, the assets of a corpora-
7 tion are less than the sum of all of its liabilities and
8 required reserves including any minimum surplus
9 required of that insurer by this chapter so as to
10 maintain its authority to transact the kinds of business
11 or insurance it is so authorized to transact.

12 (b) "Insolvency" means a financial situation in which,
13 based upon the financial information which would be
14 required by this chapter for the preparation of the
15 corporation's annual statement, the assets of the
16 corporation are less than the sum of all of its liabilities
17 and required reserves.

18 (c) "Corporation" shall be defined in section two of this
19 article.

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

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

27 (f) "Foreign country" means any other jurisdiction not
28 in any state.

29 (g) "Domiciliary state" means the state of West
30 Virginia for any corporation.

31 (h) "Ancillary state" means any state other than West
32 Virginia.

33 (i) "Reciprocal state" means any state other than this
34 state in which in substance and effect the provisions of
35 the Uniform Insurers Liquidation Act, as defined in
36 section twenty-one of article ten of chapter thirty-three,
37 are in force, including the provisions requiring that the
38 insurance commissioner or equivalent insurance super-
39 visory official be the receiver of a delinquent insurer.

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

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

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

58 (m) "Secured claim" means any claim secured in a
59 manner consistent with article nine of the uniform
60 commercial code as codified at article nine chapter
61 forty-six of this code whether by mortgage, trust, deed,
62 pledge, deposit as security, escrow, or otherwise, but not
63 including special deposit claim or claims against
64 general assets. The term also includes claims which
65 more than four months prior to the commencement of

66 delinquency proceedings have become liens upon
67 specific assets by reason of judicial process.

68 (n) "Receiver" means receiver, liquidator, rehabilita-
69 tor, supervisor or conservator as the context may
70 require.

71 (o) "Statutory Surplus" means the minimum amount
72 of unencumbered surplus which an association or
73 corporation must maintain pursuant to the require-
74 ments to this article.

75 (p) "Surplus" means the amount by which an associ-
76 ation's or corporation's assets exceeds its liabilities and
77 required reserves based upon the financial information
78 which would be required by this chapter for the
79 preparation of the association's or corporation's annual
80 statement.

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

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

5 (1) That there exist any grounds that would justify a
6 court order for a delinquency proceeding against a
7 corporation under this act;

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

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

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

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

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

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

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

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

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

3 (1) The court may without notice issue an injunction
4 restraining the corporation, its officers, directors,
5 stockholders, members, subscribers, agents and all other
6 persons from the transaction of its business or the waste

7 or disposition of its property until further order of the
8 court.

9 (2) The court may at any time during a proceeding
10 under this article issue such other injunctions or orders
11 as may be deemed necessary to prevent interference
12 with the commissioner or the proceeding, or waste of the
13 assets of the corporation, or the commencement or
14 prosecution of any actions, or the obtaining of prefer-
15 ences, judgments, attachments or other liens, or the
16 making of any levy against the corporation, or against
17 its assets or any part thereof.

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

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

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

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

§33-24-19. Grounds for liquidation.

1 The commissioner may apply to the court for an order

2 appointing him as a receiver (if his appointment as
3 receiver shall not be then in effect) and directing him
4 to liquidate the business of such corporation regardless
5 of whether or not there has been a prior order directing
6 him to rehabilitate such corporation, upon any of the
7 grounds specified in section eighteen of this article, or
8 if such corporation:

9 (a) Has ceased transacting business for a period of one
10 year; or

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

**§33-24-43. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.**

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-2. Definitions.

1 For the purpose of this article, unless the context
2 otherwise indicates:

3 (a) "Health care corporation" or "corporation" shall
4 mean a corporation organized and licensed under the
5 provisions of this article.

6 (b) "Direct health care services" shall, subject to the
7 limitations contained in this article, include all such
8 services as are designed to preserve or restore a person's
9 health.

10 (c) "Subscriber" shall mean a person (including, as the
11 case may be, the members of his family) who subscribes
12 to the direct health care plan of a corporation.

13 (d) "Commissioner" means the insurance commis-
14 sioner of the state of West Virginia.

15 (e) "Statutory Surplus" means the minimum amount
16 of unencumbered surplus which an association or
17 corporations must maintain pursuant to the require-
18 ments to this article.

19 (f) "Surplus" means the amount by which an associ-
20 ation's or corporation's assets exceeds its liabilities and
21 required reserves based upon the financial information
22 which would be required by this chapter for the
23 preparation of the association's or corporation's annual
24 statement.

**§33-25-6. Supervision and regulation by insurance com-
missioner; exemption from insurance laws.**

1 Corporations organized under this article shall be
2 subject to supervision and regulation by the insurance
3 commissioner. Such corporations organized under this
4 article, to the same extent such provisions are applicable
5 to insurers transacting similar kinds of insurance and
6 not inconsistent with the provisions of this article, shall
7 be governed by and be subject to the provisions as
8 hereinbelow indicated, of the following articles of this
9 chapter: Article six-c (guaranteed loss ratio), article
10 seven (assets and liabilities), article eight (investments),
11 article ten (rehabilitation and liquidation), section
12 fourteen, article fifteen (individual policies), article
13 sixteen-c (small employer group policies), article
14 sixteen-d (marketing and rate practices for small
15 employers), article twenty-seven (insurance holding
16 company systems), article thirty-three (annual audited
17 financial report), article thirty-four-a (standards and
18 commissioner's authority for companies deemed to be in
19 hazardous financial condition) and article thirty-five
20 (criminal sanctions for failure to report impairment);
21 and no other provision of this chapter shall apply to such
22 corporations unless specifically made applicable by the
23 provisions of this article.

§33-25-7. Licenses.

1 (a) Before it may issue any contract to a subscriber,
2 a corporation desiring to establish, maintain and operate
3 a direct health care plan must first obtain from the
4 commissioner a license as provided in this section.

5 (b) Applications for an original license shall be made
6 on forms prescribed and furnished by the commissioner
7 and shall be accompanied by the following documents
8 and information: (1) Certificate of incorporation; (2)
9 bylaws; (3) list of names and residence addresses of all
10 officers and board of directors of the corporation; (4)
11 contracts between the corporation and persons, firms,
12 corporations or associations to render direct health care
13 services; (5) proposed contracts to be issued to subscrib-
14 ers setting forth in detail the direct health care services
15 to which subscribers are entitled and the table of rates
16 to be charged for such services; (6) financial statement
17 showing the assets and liabilities of the corporation, the
18 amount of contributions paid, or agreed to be paid, to
19 the corporation for working capital, the names or name
20 of each contributor and the terms of each contribution;
21 and (7) any additional information as the commissioner
22 may require.

23 (c) Within thirty days after receipt of an application,
24 the commissioner shall, upon payment to him of a
25 license fee of two hundred dollars, issue a license
26 authorizing the corporation to transact business in this
27 state in the area to be served by it, if he is satisfied (1)
28 that the applicant is incorporated in this state under the
29 provisions of article one, chapter thirty-one of the code
30 of West Virginia as a bona fide, nonprofit corporation,
31 (2) that the health care plan which the corporation
32 proposes to operate, as well as the forms of all contracts
33 which it proposes to issue under such health care plan,
34 are based upon sound business principles and will be in
35 every respect equitable, just and fair to the subscriber,
36 (3) that the working capital available to the corporation
37 will be sufficient to pay all operating expenses during
38 the subscription period, (4) that the proposed plan will
39 adequately serve the best interests of all the people of
40 the area in which the corporation intends to operate,

41 regardless of their race, color or religion, and (5) that
42 the corporation shall have and maintain statutory
43 surplus funds of at least two million dollars: *Provided,*
44 That corporations duly licensed under this article in
45 West Virginia prior to the effective date of this section
46 whose surplus requirements are increased by virtue of
47 this section shall have until the first day of January, one
48 thousand nine hundred ninety-four, to meet such
49 increased requirements.

50 (d) The commissioner may refuse to license a corpo-
51 ration when he determines that such corporation has not
52 complied with the laws of this state, or that it is not in
53 the best interest of the people of the state that such
54 corporation be licensed, or that such corporation would
55 transact business in this state in an improper, illegal or
56 unjust manner. In such event, the commissioner shall
57 enter an order refusing such license and the applicant
58 therefor may have a hearing and judicial review in
59 accordance with the applicable provisions of article two
60 of this chapter relating to hearings before and judicial
61 review of orders entered by the commissioner.

62 (e) All licenses issued under the provisions of this
63 article shall expire at midnight on the thirty-first day
64 of March next following the date of issuance. The
65 commissioner shall renew annually the license of all
66 corporations which qualify and make applications
67 therefor upon a form prescribed by the commissioner
68 upon payment to the commissioner of a renewal fee of
69 two hundred dollars.

70 (f) The commissioner shall, after notice and hearing,
71 refuse to renew or shall revoke or suspend the license
72 of a corporation, if the corporation: (1) Violates any
73 provision of this article; (2) fails to comply with any
74 lawful rule, regulation or order of the commissioner; (3)
75 is transacting its business in an illegal, improper or
76 unjust manner, or is operating in contravention of its
77 articles of incorporation or any amendments thereto, of
78 its bylaws, or of its health care plan; (4) is found by the
79 commissioner to be in an unsound condition or in such
80 condition as to jeopardize its obligations to subscribers
81 and those with whom it has contracted; (5) compels

82 subscribers to its health care program to accept less
83 than the obligation due them under their contracts or
84 agreements with the corporation; (6) refuses to be
85 examined or to produce its accounts, records and files
86 for examination by the commissioner when required; (7)
87 fails to pay any final judgment rendered against it in
88 West Virginia within thirty days after the judgment
89 became final or time for appeal expired, whichever is
90 later; (8) fails to pay when due to the state of West
91 Virginia any fees, charges or penalties required by this
92 chapter.

93 In those cases where the commissioner has the right
94 to revoke, suspend or terminate the license or any
95 renewal thereof of said corporation, the commissioner
96 shall, by order, require the corporation to pay to the
97 state of West Virginia a penalty in the sum not
98 exceeding one thousand dollars, and on the failure of the
99 corporation to pay the penalty within thirty days after
100 notice thereof, the commissioner shall revoke or suspend
101 the license of the corporation.

102 When any license has been revoked, suspended or
103 terminated, the commissioner may reinstate the license
104 when he is satisfied that the conditions causing the
105 revocation, suspension or termination have ceased to
106 exist and are unlikely to recur.

107 In the event the commissioner revokes, suspends or
108 terminates a license, the corporation may demand a
109 hearing in the manner provided in article two of this
110 chapter.

§33-25-9. Annual report.

1 Every corporation shall annually on or before the first
2 day of March, file, with its application for renewal
3 license, a report, verified by an officer of the corpora-
4 tion, with the commissioner, showing its condition on the
5 last day of the preceding calendar year, on forms
6 required by section fourteen, article four of this chapter,
7 which report shall include:

8 (a) A financial statement of such corporation, includ-
9 ing its balance sheet and its receipts and disbursements

10 for the preceding calendar year;

11 (b) A list of the names and residence addresses of all
12 its officers and directors, and the total amount of
13 expense reimbursement to all officers and directors
14 during the preceding calendar year;

15 (c) The number of subscribers' contracts issued by
16 such corporation and outstanding;

17 (d) The names of those persons (other than subscrib-
18 ers), corporations, associations, and institutions with
19 which such corporation has agreements;

20 (e) Number and type of services currently covered
21 under the health care plan of the corporation.

**§33-25-20. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.**

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-2. Definitions.

1 (1) "Basic health care services" means physician,
2 hospital, out-of-area, podiatric, laboratory, X ray,
3 emergency, short-term mental health services not
4 exceeding twenty outpatient visits in any twelve-month
5 period, and cost-effective preventive services including
6 immunizations, well-child care, periodic health evalua-
7 tions for adults, voluntary family planning services,
8 infertility services and children's eye and ear examina-
9 tions conducted to determine the need for vision and
10 hearing corrections.

11 (2) "Commissioner" means the commissioner of
12 insurance.

13 (3) "Consumer" means any person who is not a

14 provider of care or an employee, officer, director or
15 stockholder of any provider of care.

16 (4) "Copayment" means a nominal payment required
17 of enrollees as a condition of the receipt of specific
18 health services.

19 (5) "Employee" means a person in some official
20 employment or position working for a salary or wage
21 continuously for no less than one calendar quarter and
22 who is in such a relation to another person that the latter
23 may control the work of the former and direct the
24 manner in which the work shall be done.

25 (6) "Employer" means any individual, corporation,
26 partnership, other private association, or state or local
27 government that employs the equivalent of at least
28 twenty-five full-time employees during any four consec-
29 utive calendar quarters.

30 (7) "Enrollee" means an individual who has been
31 voluntarily enrolled in a health maintenance organiza-
32 tion, including individuals on whose behalf a contractual
33 arrangement has been entered into with a health
34 maintenance organization to receive health care
35 services.

36 (8) "Evidence of coverage" means any certificate,
37 agreement or contract issued to an enrollee setting out
38 the coverage and other rights to which the enrollee is
39 entitled.

40 (9) "Health care services" means any services or goods
41 included in the furnishing to any individual of medical,
42 mental or dental care, or hospitalization or incident to
43 the furnishing of such care or hospitalization, osteopath-
44 ic services, home health, health education, rehabilita-
45 tion, as well as the furnishing to any person of any and
46 all other services or goods for the purpose of preventing,
47 alleviating, curing or healing human illness or injury.

48 (10) "Health maintenance organization" means a
49 public or private organization which provides, or
50 otherwise makes available to enrollees, health care
51 services, including at a minimum basic health care
52 services:

53 (a) Is compensated except for copayments for the
54 provision of basic health care services to enrollees solely
55 on a predetermined periodic rate basis;

56 (b) Provides physicians' services primarily (i) directly
57 through physicians who are either employees or
58 partners of such organization, or (ii) through arrange-
59 ments with individual physicians or one or more groups
60 of physicians organized on a group practice or individ-
61 ual practice basis, or (iii) through some combination of
62 (i) and (ii) above;

63 (c) Assures the availability, accessibility and quality
64 including effective utilization of the health care services
65 which it provides or makes available through clearly
66 identifiable focal points of legal and administrative
67 responsibility.

68 (11) "Individual practice basis" means any agreement
69 or arrangement to provide medical services on behalf of
70 a health maintenance organization among or between
71 physicians or between a health maintenance organiza-
72 tion and individual physicians or groups of physicians,
73 where the physicians are not employees or partners of
74 such health maintenance organization and are not
75 members of or affiliated with a medical group.

76 (12) "Medical group" means (a) a professional corpo-
77 ration, partnership, association, or other organization
78 which is composed solely of health professionals licensed
79 to practice medicine or osteopathy and of such other
80 licensed health professionals, including podiatrists,
81 dentists and optometrists, as are necessary for the
82 provision of health services for which the group is
83 responsible; (b) a majority of the members of which are
84 licensed to practice medicine or osteopathy; (c) as their
85 principal professional activity engage in the coordinated
86 practice of their profession; (d) pool their income for
87 practice as members of the group and distribute it
88 among themselves according to a prearranged salary,
89 drawing account or other plan; and (e) share medical
90 and other records and substantial portions of major
91 equipment and professional, technical and administra-
92 tive staff.

93 (13) "Premium" means a predetermined periodic rate
 94 unrelated to the actual or potential utilization of services
 95 of any particular person which is charged by the health
 96 maintenance organization for health services provided
 97 to an enrollee.

98 (14) "Provider" means any physician, hospital or other
 99 person or organization which is licensed or otherwise
 100 authorized in this state to furnish health care services.

101 (15) "Service area" means the area identified by a
 102 health maintenance organization as the area within
 103 which health care services will be provided by the
 104 health maintenance organization.

105 (16) "Statutory surplus" means the minimum amount
 106 of unencumbered surplus which an association or
 107 corporation must maintain pursuant to the require-
 108 ments to this article.

109 (17) "Surplus" means the amount by which an
 110 association's or corporation's assets exceeds its liabilities
 111 and required reserves based upon the financial informa-
 112 tion which would be required by this chapter for the
 113 preparation of the association's or corporation's annual
 114 statement.

§33-25A-4. Issuance of certificate of authority.

1 (1) Upon receipt of an application for a certificate of
 2 authority, the commissioner shall determine whether
 3 the application for a certificate of authority, with
 4 respect to health care services to be furnished has
 5 demonstrated:

6 (a) The willingness and potential ability to assure that
 7 basic health services will be provided in such a manner
 8 as to enhance and assure both the availability and
 9 accessibility of adequate personnel and facilities;

10 (b) Arrangements for an ongoing evaluation of the
 11 quality of health care;

12 (c) A procedure to develop, compile, evaluate and
 13 report statistics relating to the cost of its operations, the
 14 pattern of utilization of its services, the quality,
 15 availability and accessibility of its services, and such

16 other matters as may be reasonably required by
17 regulation.

18 (2) The commissioner shall issue or deny a certificate
19 of authority to any person filing an application within
20 one hundred twenty days after receipt of the application.
21 Issuance of a certificate of authority shall be granted
22 upon payment of the application fee prescribed, if the
23 commissioner is satisfied that the following conditions
24 are met:

25 (a) The health maintenance organization's proposed
26 plan of operation meets the requirements of subsection
27 (1) of this section;

28 (b) The health maintenance organization will effec-
29 tively provide or arrange for the provision of at least
30 basic health care services on a prepaid basis except for
31 copayments: *Provided*, That nothing herein shall be
32 construed to relieve a health maintenance organization
33 from the obligations to provide health care services
34 because of the nonpayment of copayments unless the
35 enrollee fails to make payment in at least three instances
36 over any twelve-month period: *Provided, however*, That
37 nothing herein shall permit a health maintenance
38 organization to charge copayments to medicare benefi-
39 ciaries or medicaid recipients in excess of the copay-
40 ments permitted under those programs, nor shall a
41 health maintenance organization be required to provide
42 services to such medicare beneficiaries or medicaid
43 recipients in excess of the benefits compensated under
44 such programs;

45 (c) The health maintenance organization is financially
46 responsible and may reasonably be expected to meet its
47 obligations to enrollees and prospective enrollees. In
48 making this determination, the commissioner may
49 consider:

50 (i) The financial soundness of the health maintenance
51 organization's arrangements for health care services
52 and proposed schedule of charges used in connection
53 therewith;

54 (ii) That the health maintenance organization shall

55 have and maintain fully paid in capital stock, if a for
56 profit stock corporation, or statutory surplus, funds, if
57 a nonprofit corporation, of at least one million dollars.
58 In addition, each such health maintenance organization
59 shall have and maintain additional surplus funds of at
60 least one million dollars: *Provided*, That health mainte-
61 nance organizations duly licensed under this article
62 prior to the effective date of this section whose fully
63 paid-in capital stock and surplus requirements are
64 increased by virtue of this section shall be required to
65 maintain fully paid in capital stock, if a for profit stock
66 corporation, or statutory surplus funds, if a nonprofit
67 corporation, be at least two hundred fifty thousand
68 dollars and additional surplus funds of two hundred
69 fifty thousand dollars after the first day of January, one
70 thousand nine hundred ninety-two. Any such corpora-
71 tion shall then be subject to the full paid-in capital and
72 surplus requirements of this section after the first day
73 of January, one thousand nine hundred ninety-four;

74 (iii) Any arrangements which will guarantee for a
75 reasonable period of time the continued availability or
76 payment of the cost of health care services in the event
77 of discontinuance of the plan;

78 (iv) Any agreement with providers for the provision
79 of health care services; and

80 (d) Reasonable provisions have been made for emer-
81 gency and out-of-area health care services;

82 (e) The enrollees will be afforded an opportunity to
83 participate in matters of policy and operation pursuant
84 to section six of this article;

85 (f) The health maintenance organization has demon-
86 strated that it will assume full financial risk on a
87 prospective basis for the provision of health care
88 services, including hospital care: *Provided*, That the
89 requirement of this subdivision shall not prohibit a
90 health maintenance organization from obtaining insur-
91 ance or making other arrangements (i) for the cost of
92 providing to any enrollee comprehensive health mainte-
93 nance services, the aggregate value of which exceeds
94 four thousand dollars in any year, (ii) for the cost of

95 providing comprehensive health care services to its
96 members on a nonelective emergency basis, or while
97 they are outside the area served by the organization, or
98 (iii) for not more than ninety-five percent of the amount
99 by which the health maintenance organization's costs for
100 any of its fiscal years exceed one hundred five percent
101 of its income for such fiscal years.

102 (3) A certificate of authority shall be denied only after
103 compliance with the requirements of section twenty-one
104 of this article.

105 (4) Except as provided in subsection (2), section three
106 of this article, no person who has not been issued a
107 certificate of authority shall use the words "health
108 maintenance organization" or the initials "HMO" in its
109 name, contracts or literature: *Provided*, That persons
110 who are operating under a contract with, operating in
111 association with, enrolling enrollees for, or otherwise
112 authorized by a health maintenance organization
113 licensed under this article to act on its behalf may use
114 the terms "health maintenance organization" or "HMO"
115 for the limited purpose of denoting or explaining their
116 association or relationship with the authorized health
117 maintenance organization. No health maintenance
118 organization which has a minority of board members
119 who are consumers shall use the words "consumer
120 controlled" in its name or in any way represent to the
121 public that it is controlled by consumers.

§33-25A-9. Annual report.

1 (1) Every health maintenance organization shall
2 annually, on or before the first day of March, file a
3 report verified by at least two principal officers with the
4 commissioner, covering the preceding calendar year.

5 (2) Such report shall be required by section fourteen,
6 article four of this chapter and shall include:

7 (a) A financial statement of the organization, includ-
8 ing its balance sheet and receipts and disbursements for
9 the preceding year certified by an independent certified
10 public accountant, reflecting at least (i) all prepayment
11 and other payments received for health care services

12 rendered, (ii) expenditures to all providers, by classes or
13 groups of providers, and insurance companies or
14 nonprofit health service plan corporations engaged to
15 fulfill obligations arising out of the health maintenance
16 contract, and (iii) expenditures for capital improve-
17 ments, or additions thereto, including, but not limited
18 to, construction, renovation or purchase of facilities and
19 capital equipment;

20 (b) The number of new enrollees enrolled during the
21 year, the number of enrollees as of the end of the year
22 and the number of enrollees terminated during the year;

23 (c) A summary of information compiled pursuant to
24 subdivision (c), subsection (1), section four of this article
25 in such form as may be required by the department of
26 health;

27 (d) A report of the names and residence addresses of
28 all persons set forth in subdivision (c), subsection (4),
29 section three of this article who were associated with the
30 health maintenance organization during the preceding
31 year, and the amount of wages, expense reimburse-
32 ments, or other payments to such individuals for
33 services to the health maintenance organization, includ-
34 ing a full disclosure of all financial arrangements
35 during the preceding year required to be disclosed
36 pursuant to subdivision (c), subsection (4), section three
37 of this article; and

38 (e) Such other information relating to the performance
39 of the health maintenance organization as is reasonably
40 necessary to enable the commissioner to carry out his
41 duties under this article.

§33-25A-17. Examinations.

1 (1) The commissioner may make an examination of the
2 affairs of any health maintenance organization and
3 providers with whom such organization has contracts,
4 agreements or other arrangements as often as he deems
5 it necessary for the protection of the interests of the
6 people of this state but not less frequently than once
7 every three years.

8 (2) The commissioner shall contract with the depart-

9 ment of health to make examinations concerning the
10 quality of health care services of any health mainte-
11 nance organization and providers with whom such
12 organization has contracts, agreements or other ar-
13 rangements as often as it deems necessary for the
14 protection of the interests of the people of this state but
15 not less frequently than once every three years: *Pro-*
16 *vided*, That in making the foregoing examination, the
17 department of health shall utilize the services of persons
18 or organizations with demonstrable expertise in assess-
19 ing quality of health care.

20 (3) Every health maintenance organization and
21 affiliated provider shall submit its books and records to
22 such examinations and in every way facilitate them. For
23 the purpose of examinations, the commissioner and the
24 department of health shall have all powers necessary to
25 conduct such examinations, including, but not limited
26 to, the power to issue subpoenas, the power to admin-
27 ister oaths to, and examine the officers and agents of the
28 health maintenance organization and the principles of
29 such providers concerning their business.

30 (4) The health maintenance organization shall be
31 subject to the provisions of section nine, article two of
32 this chapter in regard to the expense and conduct of
33 examinations.

34 (5) In lieu of such examination, the commissioner may
35 accept the report of an examination made by other
36 states.

**§33-25A-24. Statutory construction and relationship to
other laws.**

1 (1) Except as otherwise provided in this article,
2 provisions of the insurance law and provisions of
3 hospital or medical service corporation laws shall not be
4 applicable to any health maintenance organization
5 granted a certificate of authority under this article. This
6 provision shall not apply to an insurer or hospital or
7 medical service corporation licensed and regulated
8 pursuant to the insurance laws or the hospital or
9 medical service corporation laws of this state except
10 with respect to its health maintenance corporation

11 activities authorized and regulated pursuant to this
12 article.

(2) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: *Provided*, That nothing contained herein shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider, or makes any qualitative judgment concerning any provider.

12 (3) Any health maintenance organization authorized
13 under this article shall not be deemed to be practicing
14 medicine and shall be exempt from the provision of
15 chapter thirty of this code, relating to the practice of
medicine.

16 (4) The provisions of article six-c (guaranteed loss
17 ratio), article seven (assets and liabilities); article eight
18 (investments); section fourteen, article fifteen (individual policies), section three-f of article sixteen of this
19 chapter concerning treatment of temporomandibular
20 disorder and craniomandibular disorder; article sixteen-c (small employer group policies), article sixteen-d
21 (marketing and rate practices for small employers),
22 article twenty-seven (insurance holding company systems), article thirty-four-a (standards and commissioner's
23 authority for companies deemed to be in hazardous
24 financial condition) and article thirty-five (criminal
25 sanctions for failure to report impairment) shall be
26 applicable to any health maintenance organization
27 granted a certificate of authority under this article.
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31 (5) Any long-term care insurance policy delivered or
32 issued for delivery in this state by a health maintenance
33 organization shall comply with the provisions of article
34 fifteen-a of this chapter.

§33-25A-31. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.

§33-26A-3. Scope of article.

1 (a) This article shall provide coverage for those
2 policies and contracts specified in subsection (b) of this
3 section to:

4 (1) Persons who, regardless of where they reside
5 (except for nonresident certificate holders under group
6 policies or contracts), are the beneficiaries, assignees or
7 payees of the persons covered under paragraph (2)
8 below;

9 (2) Persons who are owners of or certificate holders
10 under such policies or contracts and who are residents
11 of the state; and

12 (3) Persons who are owners of or certificate holders
13 under such policies or contracts who are not residents
14 of the state, but only under the following conditions:

15 (A) The insurer which issued any such policy or
16 contract is domiciled in this state;

17 (B) The insurer never held a license or certificate of
18 authority in the state where the person resides;

19 (C) The state where the person resides has an
20 association similar to the association created by this
21 article; and

22 (D) The person residing in another state is not eligible
23 for coverage by the association in that state.

24 (b) This article shall apply to direct life insurance

25 policies, health insurance policies, annuity contracts,
26 and contracts supplemental to life and health insurance
27 policies and annuity contracts issued by persons licensed
28 to transact insurance in this state at any time.

29 (c) This article shall not apply to:

30 (1) Any such policies or contracts, or any part of such
31 policies or contracts, under which the risk is borne by
32 the policyholder;

33 (2) Any such policy or contract or part thereof
34 assumed by the impaired insurer under a contract of
35 reinsurance, other than reinsurance for which assump-
36 tion certificates have been issued.

§33-26A-8. Powers and duties of association.

1 In addition to the powers and duties enumerated in
2 other sections of this article:

3 (a) If a domestic insurer is an impaired insurer, the
4 association may, prior to an order of liquidation or
5 rehabilitation, and subject to any conditions imposed by
6 the association other than those which impair the
7 contractual obligations of the impaired insurer, and
8 approved by the impaired insurer and the
9 commissioner:

10 (1) Guarantee or reinsure, or cause to be guaranteed,
11 assumed or reinsured, all the covered policies of
12 residents of the impaired insurer;

13 (2) Provide such moneys, pledges, notes, guarantees or
14 other means as are proper to effectuate subdivision (1),
15 subsection (a) of this section, and assure payment of the
16 contractual obligations of the impaired insurer pending
17 action under said subdivision (1), subsection (a); and

18 (3) Lend money to the impaired insurer.

19 (b) If a foreign or alien insurer is an impaired insurer,
20 the association may, prior to an order of liquidation,
21 rehabilitation or conservation, with respect to the
22 covered policies of residents and subject to any condi-
23 tions imposed by the association other than those which
24 impair the contractual obligations of the impaired

25 insurer, and approved by the impaired insurer and the
26 commissioner:

27 (1) Guarantee or reinsure, or cause to be guaranteed,
28 assumed or reinsured, the impaired insurer's covered
29 policies of residents;

30 (2) Provide such moneys, pledges, notes, guarantees or
31 other means as are proper to effectuate subdivision (1),
32 subsection (b) of this section, and assure payment of the
33 impaired insurer's contractual obligations to residents
34 pending action under subdivision (1), subsection (b); and

35 (3) Lend money to the impaired insurer.

36 (c) If a domestic insurer is an impaired insurer under
37 an order of liquidation or rehabilitation, the association
38 shall, subject to the approval of the commissioner, (1)
39 guarantee, assume or reinsure, or cause to be guaran-
40 teed, assumed or reinsured the covered policies of the
41 impaired insurer which cover residents, (2) assure
42 payment of the contractual obligations of the impaired
43 insurer to residents, and (3) provide such moneys,
44 pledges, notes, guarantees, or other means as are
45 reasonably necessary to discharge such duties. If the
46 association fails to act within a reasonable period of
47 time, the commissioner shall have the powers and duties
48 of the association under this article with respect to such
49 domestic impaired insurer.

50 (d) If a foreign or alien insurer is an impaired insurer
51 under an order of liquidation, rehabilitation or conser-
52 vation, the association shall, subject to the approval of
53 the commissioner:

54 (1) Guarantee, assume or reinsure, or cause to be
55 guaranteed, assumed or reinsured, the covered policies
56 of residents;

57 (2) Assure payment of the contractual obligations of
58 the impaired insurer to residents; and

59 (3) Provide such moneys, pledges, notes, guarantees,
60 or other means as are reasonably necessary to discharge
61 such duties. If the association fails to act within a
62 reasonable period of time, the commissioner shall have

63 the powers and duties of the association under this
64 article with respect to such foreign or alien impaired
65 insurer.

66 (e) In carrying out its duties under subsections (c) and
67 (d) of this section, the association may request that there
68 be imposed policy liens, contract liens, moratoriums on
69 payments, or other similar means and such liens,
70 moratoriums, or similar means may be imposed if the
71 commissioner:

72 (1) Finds that the amounts which can be assessed
73 under this article are less than the amounts needed to
74 assure full and prompt performance of the impaired
75 insurer's contractual obligations, or that the economic or
76 financial conditions as they affect member insurers are
77 sufficiently adverse to render the imposition of policy or
78 contract liens, moratoriums, or similar means to be in
79 the public interest; and

80 (2) Approves the specific policy liens, contract liens,
81 moratoriums, or similar means to be used.

82 Before being obligated under subsections (c) and (d)
83 of this section, the association may request that there be
84 imposed temporary moratoriums or liens on payments
85 of cash values and policy loans and such temporary
86 moratoriums and liens may be imposed if they are
87 approved by the commissioner.

88 (f) The association shall have no liability under this
89 section for any covered policy of a foreign or alien
90 insurer whose domiciliary jurisdiction or state of entry
91 provides by statute or regulation, for residents of this
92 state protection substantially similar to that provided by
93 this article for residents of other states.

94 (g) The association may render assistance and advice
95 to the commissioner, upon his request, concerning
96 rehabilitation, payment of claims, continuations of
97 coverage, or the performance of other contractual
98 obligations of any impaired insurer.

99 (h) The association shall have standing to appear
100 before any court in this state with jurisdiction over an
101 impaired insurer concerning which the association is or

102 may become obligated under this article. Such standing
103 shall extend to all matters germane to the powers and
104 duties of the association, including, but not limited to,
105 proposals for reinsuring or guaranteeing the covered
106 policies of the impaired insurer and the determination
107 of the covered policies and contractual obligations.

108 (i) Any person receiving benefits under this article
109 shall be deemed to have assigned his rights under the
110 covered policy to the association to the extent of the
111 benefits received because of this article whether the
112 benefits are payments of contractual obligations or
113 continuation of coverage. The association may require
114 an assignment to it of such rights by any payee, policy
115 or contract owner, beneficiary, insured or annuitant as
116 a condition precedent to the receipt of any rights or
117 benefits conferred by this article upon such person. The
118 association shall be subrogated to these rights against
119 the assets of any impaired insurer.

120 The subrogation rights of the association under this
121 subsection shall have the same priority against the
122 assets of the impaired insurer as that possessed by the
123 person entitled to receive benefits under this article.

124 (j) The contractual obligations of the impaired insurer
125 for which the association becomes or may become liable
126 shall be as great as but no greater than the contractual
127 obligations of the impaired insurer would have been in
128 the absence of an impairment unless such obligations
129 are reduced as permitted by subsection (e) of this
130 section, but the association shall have no liability with
131 respect to any portion of a covered policy to the extent
132 that the death benefit coverage on any one life exceeds
133 an aggregate of three hundred thousand dollars.

134 (k) The association may:

135 (1) Enter into such contracts as are necessary or
136 proper to carry out the provisions and purposes of this
137 article.

138 (2) Sue or be sued, including taking any legal actions
139 necessary or proper for recovery of any unpaid assess-
140 ments under section nine.

141 (3) Borrow money to effect the purposes of this article.
 142 Any notes or other evidence of indebtedness of the
 143 association not in default shall be legal investments for
 144 domestic insurers and may be carried as admitted
 145 assets.

146 (4) Employ or retain such persons as are necessary to
 147 handle the financial transactions of the association, and
 148 to perform such other functions as become necessary or
 149 proper under this article.

150 (5) Negotiate and contract with any liquidator,
 151 rehabilitator, conservator, or ancillary receiver to carry
 152 out the powers and duties of the association.

153 (6) Take such legal action as may be necessary to avoid
 154 payment of improper claims.

155 (7) Exercise, for the purposes of this article and to the
 156 extent approved by the commissioner, the powers of a
 157 domestic life or health insurer, but in no case may the
 158 association issue insurance policies or annuity contracts
 159 other than those issued to perform the contractual
 160 obligations of the impaired insurer.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-5. Standards.

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

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

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

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

13 (b) *Adequacy of surplus.* — For purposes of this
 14 article, in determining whether an insurer's surplus as
 15 regards policyholders is reasonable in relation to the

16 insurer's outstanding liabilities and adequate to its
17 financial needs, the following factors, among others,
18 shall be considered:

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

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

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

26 (4) The extent of the geographical dispersion of the
27 insurer's insured risks;

28 (5) The nature and extent of the insurer's reinsurance
29 program;

30 (6) The quality, diversification and liquidity of the
31 insurer's investment portfolio;

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

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

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

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

46 For purposes of this section, an extraordinary divi-
47 dend or distribution includes any dividend or distribu-
48 tion of cash or other property, whose fair market value
49 together with that of other dividends or distributions
50 made within the preceding twelve months exceeds the
51 greater of (i) ten percent of such insurer's surplus as
52 regards policyholders as of the thirty-first day of

53 December next preceding, or (ii) the net gain from
54 operations of such insurer, if such insurer is a life
55 insurer, or the net investment income, if such insurer
56 is not a life insurer, for the twelve-month period ending
57 the thirty-first day of December next preceding, but
58 shall not include pro rata distributions of any class of
59 the insurer's own securities.

60 Notwithstanding any other provision of law, an
61 insurer may declare an extraordinary dividend or
62 distribution which is conditional upon the commission-
63 er's approval thereof, and such a declaration shall confer
64 no rights upon shareholders until (i) the commissioner
65 has approved the payment of such dividend or distribu-
66 tion or (ii) the commissioner has not disapproved such
67 payment within the thirty-day period referred to above.

68 (d) The following transactions involving a domestic
69 insurer and any person in its holding company system
70 may not be entered into unless the insurer has notified
71 the commissioner in writing of its intention to enter into
72 such transaction at least thirty days prior thereto, or
73 such shorter period as the commissioner may permit,
74 and the commissioner has not disapproved it within such
75 period:

76 (1) Sales, purchases, exchanges, loans or extensions of
77 credit, guarantees, or investments provided such
78 transactions are equal to or exceed: The lesser of one
79 percent of the insurer's admitted assets or ten percent
80 of surplus as regards policyholders; each as of the thirty-
81 first day of December next preceding;

82 (2) Loans or extensions of credit to any person who is
83 not an affiliate, where the insurer makes such loans or
84 extensions of credit with the agreement or understand-
85 ing that the proceeds of such transactions, in whole or
86 in substantial part, are to be used to make loans or
87 extensions of credit to, purchase assets of, or to make
88 investments in, any affiliate of the insurer making such
89 loans or extensions of credit provided such transactions
90 are equal to or exceed: The lesser of one percent of the
91 insurer's admitted assets or ten percent of surplus as
92 regards policyholders: Each as of the thirty-first day of

93 December next preceding;

94 (3) Reinsurance agreements or modifications thereto
95 in which the reinsurance premium or a change in the
96 insurer's liabilities equals or exceeds five percent of the
97 insurer's surplus as regards policyholders, as of the
98 thirty-first day of December next preceding, including
99 those agreements which may require as consideration
100 the transfer of assets from an insurer to a nonaffiliate,
101 if an agreement or understanding exists between the
102 insurer and nonaffiliate that any portion of such assets
103 will be transferred to one or more affiliates of the
104 insurer;

105 (4) All management agreements, service contracts and
106 all cost-sharing arrangements not within the ordinary
107 course of business; and

108 (5) Any material transactions, specified by regulation,
109 which the commissioner determines may adversely
110 affect the interests of the insurer's policyholders.

111 Nothing herein contained shall be deemed to authorize
112 or permit any transactions which in the case of an
113 insurer not a member of the same holding company
114 system would be otherwise contrary to law.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-8. Examinations and investigations.

1 At least once in three years, and whenever the
2 commissioner determines it to be prudent, he shall
3 personally, or by some competent person appointed by
4 him, visit each captive insurance company and tho-
5 roughly inspect and examine its affairs to ascertain its
6 financial condition, its ability to fulfill its obligations
7 and whether it has complied with the provisions of this
8 chapter. The commissioner upon application, in his
9 discretion, may extend the aforesaid three-year period
10 to five years, provided said captive insurance company
11 is subject to a comprehensive annual audit during such
12 period of a scope satisfactory to the commissioner by
13 independent auditors approved by him. The captive
14 insurance company shall be subject to the provisions of
15 section nine, article two of this chapter in regard to the

16 expense and conduct of the examination.

ARTICLE 32. RISK RETENTION ACT.

§33-32-8. Examination regarding financial condition.

1 Any risk retention group must submit to an exami-
 2 nation by the commissioner to determine its financial
 3 condition if the commissioner of the jurisdiction in
 4 which the group is chartered has not initiated an
 5 examination or does not initiate an examination within
 6 sixty days after a request by the commissioner of this
 7 state. Any such examination shall be coordinated to
 8 avoid unjustified repetition and conducted in an
 9 expeditious manner. The risk retention group shall be
 10 subject to the provisions of section nine, article two of
 11 this chapter in regard to the expense and conduct of the
 12 examination.

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

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

1 (a) The commissioner may, upon written application,
 2 permit any insurer that is a member of an insurance
 3 holding company system to file audited, consolidated or
 4 combined financial statements in lieu of separate annual
 5 audited financial statements if the commissioner, in his
 6 discretion, deems such method of filing reasonable and
 7 appropriate. Consolidated or combined filings will be
 8 considered reasonable and appropriate if the commis-
 9 sioner determines that the audit work performed under
 10 a consolidated filing is adequate to ascertain the
 11 financial condition of the insurer. If such approval is
 12 granted, a columnar consolidating or combining work-
 13 sheet shall be filed with the report incorporating the
 14 following:

15 (1) Amounts shown on the consolidated or combined
 16 audited financial report shall be shown on the
 17 worksheet;

18 (2) Amounts for each insurer subject to this section
 19 shall be stated separately;

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

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

24 (5) A reconciliation shall be included of any differ-
25 ences between the amounts shown in the individual
26 insurer columns of the worksheet and comparable
27 amounts shown on the annual statements of the insurers.

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

35 (c) An insurer who does not receive approval from the
36 commissioner to file an audited financial report cover-
37 ing combined or consolidated audited financial state-
38 ments for the insurer and any of its subsidiaries or
39 affiliates must file pursuant to all the requirements of
40 this article a separate audited financial report for the
41 insurer and each subsidiary or affiliate.

42 (d) Notwithstanding any provision of this section, the
43 commissioner may require an insurer to file a separate
44 audited financial report for the insurer and each
45 subsidiary or affiliate.

**ARTICLE 34A. STANDARDS AND COMMISSIONER'S AUTHOR-
ITY FOR COMPANIES DEEMED TO BE IN
HAZARDOUS FINANCIAL CONDITION.**

§33-34A-1. Definitions.

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

3 (a) "Insurer" means and includes every person
4 engaged as indemnitor, surety or contractor in the
5 business of entering into contracts of insurance or of
6 annuities as limited to any insurer who is doing an
7 insurer business, or has transacted insurance in this
8 state, and against whom claims arising from that
9 transaction may exist now or in the future. This shall
10 include, but not be limited to, any domestic insurer as
11 defined in section six, article one of chapter thirty-three

12 and any foreign insurer as defined in section seven,
13 article one of said chapter thirty-three, including any
14 stock insurer, mutual insurer, reciprocal insurer,
15 farmer's mutual fire insurance company, fraternal
16 benefit society, hospital service corporation, medical
17 service corporation, dental service corporation, health
18 service corporation, health care corporation, health
19 maintenance organization, captive insurance company
20 or risk retention group.

21 (b) A "noninvestment grade bond" shall mean a bond
22 that has been rated by the securities valuation office of
23 the national association of insurance commissioners of
24 having a designation of class four equals low quality,
25 class five equals lower quality and class six equals in
26 or near default.

§33-34A-2. Purpose.

1 The purpose of this article is to set forth the standards
2 which the insurance commissioner may use for identi-
3 fying insurers found to be in such condition as to render
4 the continuance of their business hazardous to the public
5 or to holders of their policies or certificates of insurance.
6 This article shall not be interpreted to limit the powers
7 granted the commissioner by any laws or parts of laws
8 of this state, nor shall this article be interpreted to
9 supersede any laws or parts of laws of this state.

§33-34A-3. Standards.

1 The following standards, either singularly or a
2 combination of two or more, may be considered by the
3 commissioner to determine whether the continued
4 operation of any insurer transacting an insurance
5 business in this state might be deemed to be hazardous
6 to the policyholders, creditors or the general public. The
7 commissioner may consider:

8 (a) Adverse findings reported in financial condition
9 and market conduct examination reports;

10 (b) The national association of insurance commission-
11 ers insurance regulatory information system and its
12 related reports;

13 (c) A company which is under suspension, revocation
14 or rehabilitation in another state;

15 (d) The insurer's asset portfolio when viewed in light
16 of current economic conditions is not of sufficient value,
17 liquidity, or diversity to assure the company's ability to
18 meet its outstanding obligations as they mature;

19 (e) The total of the noninvestment grade bonds equals
20 twenty percent of the total bond portfolio;

21 (f) The ratios of commission expense, general insur-
22 ance expense, policy benefits and reserve increases as to
23 annual premium and net investment income which
24 could lead to an impairment of capital and surplus;

25 (g) The ability of an assuming reinsurer to perform
26 and whether the insurer's reinsurance program provides
27 sufficient protection for the company's remaining
28 surplus after taking into account the insurer's cash flow
29 and the classes of business written as well as the
30 financial condition of the assuming reinsurer;

31 (h) The insurer's operating loss in the last twelve-
32 month period or any shorter period of time, including,
33 but not limited to, net capital gain or loss, change in
34 nonadmitted assets, and cash dividends paid to share-
35 holders, is greater than fifty percent of such insurer's
36 remaining surplus as regards policyholders in excess of
37 the minimum required;

38 (i) Whether any affiliate, subsidiary or reinsurer is
39 insolvent, threatened with insolvency, or delinquent in
40 payment of its monetary or other obligation;

41 (j) Contingent liabilities, pledges or guaranties which
42 either individually or collectively involve a total amount
43 which in the opinion of the commissioner may affect the
44 solvency of the insurer;

45 (k) Whether any "controlling person" of an insurer is
46 delinquent in the transmitting to, or payment of, net
47 premiums to such insurer;

48 (l) The age and collectibility of receivables;

49 (m) Whether the management of an insurer, including

50 officers, directors, or any other person who directly or
51 indirectly controls the operation of such insurer, fails to
52 possess and demonstrate the competence, fitness and
53 reputation deemed necessary to serve the insurer in such
54 position;

55 (n) Whether management of an insurer has failed to
56 respond to inquiries relative to the condition of the
57 insurer or has furnished false and misleading informa-
58 tion concerning an inquiry;

59 (o) Whether management of an insurer either has filed
60 any false or misleading sworn financial statement, or
61 has released a false or misleading financial statement
62 to lending institutions or to the general public, or has
63 made a false or misleading entry, or has omitted an
64 entry of material amount in the books of the insurer;

65 (p) A ratio of gross premiums written to surplus as
66 to policyholders exceeds ten to one and net premium
67 written to surplus as to policyholders exceeds four to
68 one;

69 (1) Projected annual net or gross premiums shall be
70 based on the actual writings to date for the insurer's
71 current calendar year or the insurer's writings for the
72 previous calendar year or both. Ratios shall be computed
73 on an annualized basis.

74 (2) For the purposes of this subsection, "gross
75 premiums written" means direct premiums written and
76 reinsurance assumed, and "net premiums written"
77 means direct premiums written and reinsurance as-
78 sumed less reinsurance ceded.

79 (3) This ratio shall not apply to life insurance written
80 by life or life and health insurers.

81 (q) A ratio of current assets to current liabilities
82 which is below one;

83 (r) The total investments in parent, subsidiaries and
84 affiliates exceeds one hundred percent of surplus as
85 regards policyholders in excess of the minimum re-
86 quired by statute or order of the commissioner;

87 (s) Whether the insurer has grown so rapidly and to

88 such an extent that it lacks adequate financial and
89 administrative capacity to meet its obligations in a
90 timely manner; and

91 (t) Whether the company has experienced or will
92 experience in the foreseeable future cash flow and/or
93 liquidity problems.

§33-34A-4. Commissioner's authority.

1 (a) For the purposes of making a determination of an
2 insurer's financial condition under this regulation, the
3 commissioner may:

4 (1) Disregard any credit or amount receivable result-
5 ing from transactions with a reinsurer which is
6 insolvent, impaired or otherwise subject to a delin-
7 quency proceeding;

8 (2) Make appropriate adjustments to asset values
9 attributable to investments in or transactions with
10 parents, subsidiaries, or affiliates;

11 (3) Refuse to recognize the stated value of accounts
12 receivable if the ability to collect receivables is highly
13 speculative in view of the age of the account or the
14 financial condition of the debtor; or

15 (4) Increase the insurer's liability in an amount equal
16 to any contingent liability, pledge or guarantee not
17 otherwise included if there is a substantial risk that the
18 insurer will be called upon to meet the obligation
19 undertaken within the next twelve-month period.

20 (b) If the commissioner determines that the continued
21 operation of the insurer licensed to transact business in
22 this state may be hazardous to the policyholders or the
23 general public, then the commissioner may, upon his
24 determination, issue an order requiring the insurer to:

25 (1) Reduce the total amount of present and potential
26 liability for policy benefits by reinsurance;

27 (2) Reduce, suspend or limit the volume of business
28 being accepted or renewed;

29 (3) Reduce general insurance and commission ex-
30 penses by specified methods;

- 31 (4) Increase the insurer's capital and surplus;
- 32 (5) Suspend or limit the declaration and payment of
- 33 dividend by an insurer to its stockholders or to its
- 34 policyholders;
- 35 (6) File reports in a form acceptable to the commis-
- 36 sioner concerning the market value of an insurer's
- 37 assets;
- 38 (7) Limit or withdraw from certain investments or
- 39 discontinue certain investment practices to the extent
- 40 the commissioner deems necessary;
- 41 (8) Document the adequacy of premium rates in
- 42 relation to the risks insured; or
- 43 (9) File, in addition to regular annual statements,
- 44 interim financial reports on the form adopted by the
- 45 national association of insurance commissioners or on
- 46 such format as promulgated by the commissioner. If the
- 47 insurer is a foreign insurer the commissioner's order
- 48 may be limited to the extent provided by statute.
- 49 (c) An order issued pursuant to the provisions of this
- 50 article shall be subject to review pursuant to applicable
- 51 state administrative proceedings under article two of
- 52 this chapter.

§33-34A-5. Election of proceedings.

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

§33-34A-6. Immunity from liability.

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

§33-34A-7. Rules.

1 The commissioner may after notice and hearing
2 promulgate reasonable rules in accordance with chapter
3 twenty-nine-a of this code, as are necessary and proper
4 to effectuate the purposes of this article.

§33-34A-8. Severability of provisions.

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

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

Homer Heck
Chairman Senate Committee

Ernest C Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Harrell Endelme
Clerk of the Senate

Donald L. Hopp
Clerk of the House of Delegates

Will Hunter
President of the Senate

Dot C. C.
Speaker of the House of Delegates

The within *is approved* this the *2nd* day of *April*, 1991.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:10 am