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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4666

(By Delegate MR. SPEAKER, MR. CHAMBERS AND
DELEGATE BURK)
[By Request]

Passed MARCH 7, 1992

In Effect JULY 1, 1992 ~~Passage~~

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4666

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request]

[Passed March 7, 1992; in effect July 1, 1992.]

Mr. Mr.

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

sections two, three, four, five and nine, article twenty-seven of said chapter; to further amend said article by adding thereto two new sections, designated sections two-a and thirteen; to amend and reenact section five-b, article twenty-eight of said chapter; to amend and reenact section six, article thirty-one of said chapter; to amend and reenact sections one, two, three, four, five, eight, nine, fourteen, sixteen, seventeen, eighteen, nineteen and twenty-one, article thirty-two of said chapter; to further amend said article by adding thereto a new section, designated section twenty-four; and to further amend said chapter by adding thereto two new articles, designated articles thirty-six and thirty-seven, all relating to insurance; making technical and other changes in order to comply with federal insurance oversight requirements; insurance commissioner; duties of commissioner; general provisions; financial statement filings; reinsurance; credits allowed for reinsurance; life reinsurance agreements; reduction of liability; establishment of asset; organization and procedures of domestic stock and mutual insurance companies; reinsurance by domestic stock insurers and domestic mutual insurers; bulk reinsurance; rehabilitation and liquidation; grounds for rehabilitation of domestic insurers; ~~policies discriminating among health care providers; payment to all health care providers including optometrists;~~ medicare supplement insurance; removing references to eligibility for medicare by reason or reasons of age; farmers' mutual fire insurance companies; applicability of other provisions; reinsurance; joint policies; mergers and consolidations; 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; grounds for rehabilitation of a corporation; health care corporations, exemption from insurance laws; health maintenance organization act, statutory construction and relationship to other laws; insurance holding company systems; definitions; kinds of subsidiaries; investment authority and limitations in subsidiaries; acquisition of control of or merger with domestic insurer; registration, member of insurance

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holding company system; standards for transactions; criminal proceedings; recovery of funds by receiver; captive insurers; corporate organization; risk retention act; purpose; definitions; charter and license requirements of domestic risk retention group; registration required of foreign risk retention group prior to conducting business in state; risk retention groups required to file financial condition report annually; registration and filing fees for risk retention groups; premium tax rate for risk retention groups; examinations regarding financial condition; notification to purchaser; compulsory associations, no coverage by state guaranty funds; registration of risk purchasing groups; restrictions on insurance purchased by risk purchasing groups; notification to purchaser; administrative and procedural authority regarding risk retention groups and risk purchasing groups; agents to obtain licenses; duties of groups operating prior to enactment; business transacted with producer-controlled property/casualty insurer; definitions; limitations on business placed with controlled insurer; liabilities of controlling producer in the event of insolvency, managing general agents; definitions; licensure requirements; required contract provisions; duties of insurers; examination authority; penalties and liabilities; fines; revocation or suspension of license; commissioner authorized to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

Amby

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

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-3. Duties of the commissioner; employment of legal counsel.

1 (a) The commissioner shall enforce the provisions of
2 this chapter and perform the duties required there-
3 under; shall affix the commissioner's official seal to all
4 documents and papers required to be filed in other
5 states by domestic insurers and to other papers when an
6 official seal is required; and shall, on or before the tenth
7 day of each month, pay into the state treasury all fees
8 and moneys which he or she has received during the
9 preceding calendar month.

10 (b) Notwithstanding any provisions of this code to the
11 contrary, the commissioner may acquire such legal
12 services as are deemed necessary, including representa-
13 tion of the commissioner before any court or adminis-
14 trative body. Such counsel may be employed either on
15 a salaried basis or on a reasonable fee basis. In addition,
16 the commissioner may call upon the attorney general for
17 legal assistance and representation as provided by law.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-14. Financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner.

1 (a) Each licensed insurer shall annually on or before
2 the first day of March, unless the time is extended by
3 the commissioner for good cause shown, file with the
4 commissioner a true statement of its financial condition,
5 transactions and affairs as of the preceding thirty-first
6 day of December. Such statement shall be on the
7 appropriate national association of insurance commis-
8 sioners annual statement blank; shall be prepared in
9 accordance with the national association of insurance
10 commissioners annual statement instructions handbook;
11 and shall follow the accounting practices and procedures
12 prescribed by the national association of insurance
13 commissioners accounting practices and procedures
14 manual as amended: *Provided*, That each licensed
15 insurer shall also file true statements of financial
16 condition on a more frequent basis if the commissioner
17 so orders. The commissioner shall establish the fre-
18 quency, due date and form acceptable to him or her for
19 such filings: *Provided, however*, That the statement of an
20 alien insurer shall relate only to its transactions and
21 affairs in the United States unless the commissioner
22 requires otherwise.

23 (b) Each domestic insurer shall also file with the
24 commissioner a true quarterly statement of its financial
25 condition, transactions and affairs as of the thirty-first
26 day of March, the thirtieth day of June, and the thirtieth
27 day of September of each year. Quarterly statements
28 shall be due forty-five days after the end of each
29 quarter. All quarterly statements shall be submitted on
30 the appropriate national association of insurance
31 commissioners quarterly statement blank; shall be
32 prepared in accordance with the national association of
33 insurance commissioners quarterly statement instruc-
34 tions; and shall follow the accounting practices and
35 procedures prescribed by the national association of
36 insurance commissioners accounting practices and
37 procedures manual, as amended. The commissioner may

38 subject any licensed insurer to the requirements of this
39 section whenever the commissioner deems it necessary.

40 (c) The commissioner may require that all or part of
41 the information contained in the annual statement blank
42 and the quarterly statement blanks be submitted to the
43 department in a computer-readable form compatible
44 with the electronic data processing system of the
45 department.

46 (d) Each domestic, foreign and alien insurer, organ-
47 ization or corporation who is subject to the requirements
48 of this section shall annually, on or before the first day
49 of March each year, and forty-five days after the end
50 of the first, second and third calendar quarters, file with
51 the national association of insurance commissioners a
52 copy of its annual statement convention blank and the
53 quarterly statement blanks, along with such additional
54 filings as prescribed by the commissioner and shall pay
55 the fee established by the national association of
56 insurance commissioners for filing, review or processing
57 of the information. The information filed with the
58 national association of insurance commissioners shall be
59 in the same format and scope as that required by the
60 commissioner and shall include the signed jurat page
61 and any other required information. Any amendments
62 and addenda to the annual statement filing and quar-
63 terly statement filings subsequently filed with the
64 commissioner shall also be filed with the national
65 association of insurance commissioners.

66 (e) Foreign insurers that are domiciled in a state
67 which has a law substantially similar to subsection (a)
68 of this section shall be deemed in compliance with this
69 section.

70 (f) In the absence of actual malice, members of the
71 national association of insurance commissioners, their
72 duly authorized committees, subcommittees, and task
73 forces, their delegates, national association of insurance
74 commissioners employees, and all others charged with
75 the responsibility of collecting, reviewing, analyzing and
76 disseminating the information developed from the filing
77 of the annual statement convention blanks and the

78 quarterly statement blanks shall be acting as agents of
79 the commissioner under the authority of this article and
80 shall not be subject to civil liability for libel, slander or
81 any other cause of action by virtue of their collection,
82 review, and analysis or dissemination of the data and
83 information collected from the filings required
84 hereunder.

85 (g) All financial analysis ratios and examination
86 synopses concerning insurance companies that are
87 submitted to the department by the national association
88 of insurance commissioners insurance regulatory
89 information system are confidential and may not be
90 disclosed by the department.

91 (h) The commissioner may suspend, revoke or refuse
92 to renew the certificate of authority of any insurer
93 failing to file its annual statement or the quarterly
94 statement blanks, or any other statement of financial
95 condition required by this section, when due or within
96 any extension of time which the commissioner, for good
97 cause, may have granted.

98 (i) Any variance to the requirements of this section
99 shall require the express authorization of the
100 commissioner.

101 (j) The commissioner shall promulgate legislative
102 rules in accordance with the provisions of chapter
103 twenty-nine-a of this code to effectuate the requirements
104 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) Credit for reinsurance shall be governed by the
7 provisions of sections fifteen-a and fifteen-b of this
8 article.

9 (c) Any licensed insurer may accept reinsurance for
10 the same kinds of insurance and within the same limits

11 as it is authorized to transact direct insurance.

12 (d) An insurer may not reinsure all or substantially
13 all of its risks on property or lives located in West
14 Virginia, or substantially all of a major class thereof,
15 unless the reinsurance agreement be filed with and
16 approved by the commissioner.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

1 (a) For purposes of this section, an “accredited
2 reinsurer” is one which:

3 (1) Has filed an application for accreditation and
4 received a letter of accreditation from the commissioner;

5 (2) Is licensed to transact insurance or reinsurance in
6 at least one of the fifty states of the United States or
7 the District of Columbia or, in the case of a United
8 States branch of an alien assuming insurer, is entered
9 through and licensed to transact insurance or reinsu-
10 rance in at least one of the fifty states of the United
11 States or the District of Columbia;

12 (3) Has filed with the application a certified statement
13 that the company submits to this state’s jurisdiction and
14 that the company will comply with the laws, rules and
15 regulations of the state of West Virginia;

16 (4) Has filed with the application a certified statement
17 that the company submits to the examination authority
18 granted the commissioner by section nine, article two of
19 this chapter and will pay all examination costs and fees
20 as required by that section;

21 (5) Has filed with the application a copy of its most
22 recent annual statement in a form consistent with the
23 requirements of subdivision (8) of this subsection and a
24 copy of its last audited financial statement;

25 (6) Has filed any other information the commissioner
26 requests to determine that the company qualifies for
27 accreditation under this section;

28 (7) Has remitted the applicable processing fee with its

29 application for accreditation;

30 (8) Files with the commissioner after initial accred-
31 itation on or before the first day of March of each year
32 a true statement of its financial condition, transactions
33 and affairs as of the preceding thirty-first day of
34 December. Such statement shall be on the appropriate
35 national association of insurance commissioners annual
36 statement blank; shall be prepared in accordance with
37 the national association of insurance commissioners
38 annual statement instructions; and shall follow the
39 accounting practices and procedures prescribed by the
40 national association of insurance commissioners account-
41 ing practices and procedures manual as amended. Such
42 statement shall be accompanied by the applicable
43 annual statement filing fee. The commissioner may
44 grant extensions of time for filing of this annual
45 statement upon application by the accredited reinsurer;
46 and

47 (9) Files with the commissioner after initial accred-
48 itation by the first day of June of each year a copy of
49 its audited financial statement for the period ending the
50 preceding thirty-first day of December.

51 (b) If the commissioner determines that the assuming
52 insurer has failed to continue to meet any of these
53 qualifications, he or she may upon written notice and
54 hearing, as prescribed by section thirteen, article two of
55 this chapter, revoke an assuming insurer's accreditation.
56 Credit shall not be allowed to a ceding insurer if the
57 assuming insurers' accreditation has been revoked by
58 the commissioner after notice and hearing.

59 (c) Credit for reinsurance shall be allowed a domestic
60 ceding insurer or any foreign or alien insurer transact-
61 ing insurance in West Virginia that is domiciled in a
62 jurisdiction that employs standards regarding credit for
63 reinsurance that are not substantially similar to those
64 applicable under this article as either an asset or a
65 deduction from liability on account of reinsurance ceded
66 only when the reinsurer meets one of the following
67 requirements:

68 (1) Credit shall be allowed when the reinsurance is

69 ceded to an assuming insurer which is licensed to
70 transact insurance or reinsurance in this state.

71 (2) Credit shall be allowed when the reinsurance is
72 ceded to an assuming insurer which is accredited as a
73 reinsurer in this state prior to the thirty-first day of
74 December of the year for which the ceding insurer is
75 claiming a credit for reinsurance.

76 (3) Credit shall be allowed when the reinsurance is
77 ceded to an assuming insurer which is domiciled and
78 licensed in, or in the case of a United States branch of
79 an alien assuming insurer, is entered through one of the
80 fifty states of the United States or the District of
81 Columbia and which employs standards regarding
82 credit for reinsurance substantially similar to those
83 applicable under this statute, and the ceding insurer
84 provides evidence suitable to the commissioner that the
85 assuming insurer:

86 (A) Maintains a surplus as regards policyholders in an
87 amount not less than twenty million dollars: *Provided,*
88 That the requirements of this paragraph do not apply
89 to reinsurance ceded and assumed pursuant to pooling
90 arrangements among insurers in the same holding
91 company system; and

92 (B) The ceding insurer provides the commissioner
93 with a certified statement from the assuming insurer
94 that the assuming insurer submits to the authority of
95 this state to examine its books and records granted the
96 commissioner by section nine, article two of this chapter
97 and will pay all examination costs and fees as required
98 by that section; and

99 (C) The reinsurer complies with the provisions of
100 subdivision (6), subsection (c) herein.

101 (4) Credit shall be allowed when the reinsurance is
102 ceded to an assuming insurer which maintains a trust
103 fund as required by subsection (d) herein in a qualified
104 United States financial institution, as defined by this
105 section, for the payment of the valid claims of its United
106 States policyholders and ceding insurers, their assigns
107 and successors in interest, and complies with the

108 provisions of subdivision (6) herein.

109 (5) Credit shall be allowed when the reinsurance is
110 ceded to an assuming insurer not meeting the require-
111 ments of subdivisions (1) through (4), subsection (c) of
112 this section, but only with respect to the insurance of
113 risks located in jurisdictions where such reinsurance is
114 required by applicable law or regulation of that
115 jurisdiction.

116 (6) If the assuming insurer is not licensed or accred-
117 ited to transact insurance or reinsurance in this state,
118 the credit permitted by subdivisions (3) and (4) of this
119 subsection shall not be allowed unless the assuming
120 insurer agrees in the reinsurance agreements:

121 (A) That in the event of the failure of the assuming
122 insurer to perform its obligations under the terms of the
123 reinsurance agreement, the assuming insurer, at the
124 request of the ceding insurer, shall submit to the
125 jurisdiction of any court of competent jurisdiction in any
126 state of the United States, shall comply with all
127 requirements necessary to give such court jurisdiction,
128 and shall abide by the final decision of such court or of
129 any appellate court in the event of an appeal; and

130 (B) To designate the secretary of state as its true and
131 lawful attorney upon whom may be served any lawful
132 process in any action, suit or proceeding instituted by
133 or on behalf of the ceding company. Such process shall
134 be served upon the secretary of state, or accepted by him
135 or her, in the same manner as provided for service of
136 process upon unlicensed insurers under section thirteen
137 of this article: *Provided*, That this provision is not
138 intended to conflict with or override the obligation of the
139 parties to a reinsurance agreement to arbitrate their
140 disputes, if such an obligation is created in the
141 agreement.

142 (d) Whenever an assuming insurer establishes a trust
143 fund for the payment of claims pursuant to the provi-
144 sions of this section, the following requirements shall
145 apply:

146 (1) The assuming insurer shall report annually to the

147 commissioner information substantially the same as that
148 required to be reported on the national association of
149 insurance commissioners annual statement form by
150 licensed insurers to enable the commissioner to deter-
151 mine the sufficiency of the trust fund. In the case of a
152 single assuming insurer, the trust shall consist of a
153 trustee account representing the assuming insurer's
154 liabilities attributable to business written in the United
155 States and, in addition, the assuming insurer shall
156 maintain a trustee surplus of not less than twenty
157 million dollars. In the case of a group of individual
158 unincorporated underwriters, the trust shall consist of
159 a trustee account representing the group's liabilities
160 attributable to business written in the United States
161 and, in addition, the group shall maintain a trustee
162 surplus of which one hundred million dollars shall be
163 held jointly for the benefit of United States ceding
164 insurers of any member of the group. Such group shall
165 make available to the commissioner an annual certifi-
166 cation of the solvency of each underwriter by the group's
167 domiciliary regulator and its independent public
168 accountants.

169 (2) In the case of a group of incorporated insurers
170 under common administration which complies with the
171 filing requirements contained in the previous para-
172 graph; which has continuously transacted an insurance
173 business outside the United States for at least three
174 years immediately prior to making application for
175 accreditation; which submits to this state's authority to
176 examine its books and records and bears the expense of
177 the examination; and which has aggregate policy-
178 holders' surplus of ten billion dollars, the trust shall be
179 in an amount equal to the group's several liabilities
180 attributable to business ceded by United States ceding
181 insurers to any member of the group pursuant to
182 reinsurance contracts issued in the name of such group.
183 The group shall also maintain a joint trustee surplus
184 of which one hundred million dollars shall be held
185 jointly for the benefit of United States ceding insurers
186 of any member of the group as additional security for
187 any such liabilities. Each member of such group shall
188 make available to the commissioner an annual certifi-

189 cation of the member's solvency by the member's
190 domiciliary regulator and its independent public
191 accountant.

192 (3) Any trust that is subject to the provisions of this
193 section shall be established in a form approved by the
194 commissioner. The trust instrument shall provide that
195 contested claims shall be valid and enforceable upon the
196 final order of any court of competent jurisdiction in the
197 United States. The trust shall vest legal title to its assets
198 in the trustees of the trust for its United States
199 policyholders and ceding insurers, their assigns and
200 successors in interest. The trust and the assuming
201 insurer shall be subject to examination as determined
202 by the commissioner. The trust described herein shall
203 remain in effect for as long as the assuming insurer
204 shall have outstanding obligations due under the
205 reinsurance agreements subject to the trust.

206 (4) No later than the twenty-eighth day of February
207 of each year the trustees of the trust shall report to the
208 commissioner in writing setting forth the balance of the
209 trust and listing the trust's investments at the preceding
210 year end. The trustees shall certify the date of termi-
211 nation of the trust, if so planned, or certify that the trust
212 shall not expire prior to the next following December
213 thirty-first.

214 (e) A reduction from liability for the reinsurance
215 ceded by a ceding insurer subject to the requirements
216 of this article to an assuming insurer not meeting the
217 requirements of subsection (c) of this section shall be
218 allowed in an amount not exceeding the liabilities
219 carried by the ceding insurer. Such reduction shall be
220 in the amount of funds held by or on behalf of the ceding
221 insurer, including funds held in trust for the ceding
222 insurer, under a reinsurance contract with such assum-
223 ing insurer as security for the payment of obligations
224 thereunder: *Provided*, That such security is held in the
225 United States subject to withdrawal solely by, and
226 under the exclusive control of, the ceding insurer; or, in
227 the case of a trust, held in a qualified United States
228 financial institution, as defined by this section. Such
229 security may be in the form of:

230 (1) Cash;

231 (2) Securities listed by the securities valuation office
232 of the national association of insurance commissioners
233 and qualifying as admitted assets; or

234 (3) Clean, irrevocable, unconditional letters of credit,
235 issued or confirmed by a qualified United States
236 financial institution, as defined by this section, no later
237 than the thirty-first day of December of the year for
238 which filing is being made, and in the possession of the
239 ceding company on or before the filing date of its annual
240 statement: *Provided*, That letters of credit meeting
241 applicable standards of issuer acceptability as of the
242 dates of their issuance or confirmation shall, notwith-
243 standing the issuing or confirming institution's subse-
244 quent failure to meet applicable standards of issuer
245 acceptability, continue to be acceptable as security until
246 their expiration, extension, renewal, modification or
247 amendment, whichever first occurs.

248 (f) For purposes of this section, a "qualified United
249 States financial institution" means an institution that:

250 (1) Is organized or licensed under the laws of the
251 United States or any state thereof;

252 (2) Is regulated, supervised and examined by United
253 States federal or state authorities having regulatory
254 authority over banks and trust companies; and

255 (3) Has been determined by either the commissioner,
256 or the securities valuation office of the national associ-
257 ation of insurance commissioners, to meet such stand-
258 ards of financial condition and standing as are consi-
259 dered necessary and appropriate to regulate the quality
260 of financial institutions whose letters of credit will be
261 acceptable to the commissioner.

262 (g) A "qualified United States financial institution"
263 means, for purposes of those provisions of this law
264 specifying those institutions that are eligible to act as
265 a fiduciary of a trust, an institution that:

266 (1) Is organized or, in the case of a United States
267 branch or agency office of a foreign banking organiza-

268 tion, licensed under the laws of the United States or any
269 state thereof and has been granted authority to operate
270 with fiduciary powers; and

271 (2) Is regulated, supervised and examined by federal
272 or state authorities having regulatory authority over
273 banks and trust companies.

274 (h) The provisions of this section shall apply to all
275 cessations on or after the first day of January, one
276 thousand nine hundred ninety-three.

§33-4-15b. Life reinsurance agreements; reduction of liability; requirements.

1 (a) This section applies to all domestic life insurers
2 and to all other licensed life insurers who are not subject
3 to a substantially similar law or regulation in their
4 domiciliary state.

5 (b) A life insurer subject to this article shall not, for
6 reinsurance ceded, reduce any liability or establish any
7 asset in any financial statement filed with the depart-
8 ment if, by the terms of the reinsurance agreement, in
9 substance or effect, any of the following conditions exist:

10 (1) The primary effect of the reinsurance agreement
11 is to transfer deficiency reserves or excess interest
12 reserves to the books of the reinsurer for a "risk charge"
13 and the agreement does not provide for significant
14 participation by the reinsurer in one or more of the
15 following risks: Mortality, morbidity, investment or
16 surrender benefit;

17 (2) The reserve credit taken by the ceding insurer is
18 not in compliance with this chapter, including actuarial
19 interpretations or standards adopted by the department;

20 (3) The reserve credit taken by the ceding insurer is
21 greater than the underlying reserve of the ceding
22 company supporting the policy obligations transferred
23 under the reinsurance agreement;

24 (4) The ceding insurer is required to reimburse the
25 reinsurer for negative experience under the reinsurance
26 agreement: *Provided*, That neither offsetting experience
27 refunds against prior years' losses nor payment by the

28 ceding insurer of an amount equal to prior years' losses
29 upon voluntary termination of in-force reinsurance by
30 that ceding insurer shall be considered such a reimbur-
31 sement to the reinsurer for negative experience;

32 (5) The ceding insurer can be deprived of surplus at
33 the reinsurer's option or automatically upon the occur-
34 rence of some event, such as the insolvency of the ceding
35 insurer: *Provided*, That termination of the reinsurance
36 agreement by the reinsurer for nonpayment of reinsu-
37 rance premiums shall not be considered to be such a
38 deprivation of surplus;

39 (6) The ceding insurer shall, at specific points in time
40 scheduled in the agreement, terminate or automatically
41 recapture all or part of the reinsurance ceded;

42 (7) No cash payment is due from the reinsurer,
43 throughout the lifetime of the reinsurance agreement,
44 with all settlements prior to the termination date of the
45 agreement made only in a "reinsurance account," and no
46 funds in such account are available for the payment of
47 benefits; or

48 (8) The reinsurance agreement involves the possible
49 payment by the ceding insurer to the reinsurer of
50 amounts other than from income reasonably expected
51 from the reinsured policies.

52 (c) Notwithstanding the provisions of subsection (b) of
53 this section, a life insurer subject to this article may,
54 with the prior approval of the commissioner, take such
55 reserve credit as the commissioner may deem consistent
56 with this chapter, including actuarial interpretations or
57 standards adopted by the commissioner.

58 (d) A reinsurance agreement or amendment to any
59 agreement shall not be used to reduce any liability or
60 to establish any asset in any financial statement filed
61 with the commissioner, unless the agreement, amend-
62 ment or a letter of intent has been duly executed by both
63 parties no later than the "as of date" of the financial
64 statement.

65 (e) In the case of a letter of intent, a reinsurance
66 agreement or an amendment to a reinsurance agree-

67 ment shall be executed within a reasonable period of
68 time, not exceeding ninety days from the execution date
69 of the letter of intent, in order for credit to be granted
70 for the reinsurance ceded.

71 (f) Life insurers subject to this article may continue
72 to reduce liabilities or establish assets in financial
73 statements filed with the commissioner for reinsurance
74 ceded under types of reinsurance agreements described
75 in subsection (b) of this section: *Provided, That:*

76 (1) The agreements were executed and in force prior
77 to the effective date of this article;

78 (2) No new business is ceded under the agreements
79 after the effective date of this article;

80 (3) The reduction of the liability or the asset estab-
81 lished for the reinsurance ceded is reduced to zero by
82 the thirty-first day of December, one thousand nine
83 hundred ninety-four, or such later date approved by the
84 commissioner as a result of an application made by the
85 ceding insurer prior to the thirty-first day of December,
86 one thousand nine hundred ninety-two;

87 (4) The reduction of the liability or the establishment
88 of the asset is otherwise permissible under all other
89 applicable provisions of this chapter, including actuarial
90 interpretations or standards adopted by the commis-
91 sioner; and

92 (5) The department is notified, within ninety days
93 after the effective date of this section, of the existence
94 of such reinsurance agreements and all corresponding
95 credits taken in the ceding insurer's annual statement
96 for the year one thousand nine hundred ninety-one.

**ARTICLE 5. ORGANIZATION AND PROCEDURES OF DOMESTIC
STOCK AND MUTUAL INSURERS.**

§33-5-26. Reinsurance.

1 (a) A domestic stock or mutual insurer may accept
2 reinsurance for the same kinds of insurance and within
3 the same limits as it is authorized to transact direct
4 insurance, unless such reinsurance is prohibited by its
5 articles of incorporation.

6 (b) A domestic stock or mutual insurer may reinsure
7 all or substantially all its business in force, or substan-
8 tially all of a major class thereof, with another insurer
9 by an agreement of bulk reinsurance; but such agree-
10 ments shall not become effective unless filed in advance
11 with and approved in writing by the commissioner.

12 (c) The commissioner shall approve such agreement
13 within a reasonable time after such filing unless he or
14 she finds that it is inequitable to the domestic insurer,
15 its stockholders or members, or would substantially
16 reduce the protection or service to its policyholders or
17 members. If the commissioner does not approve the
18 agreement he or she shall so notify the insurer in
19 writing specifying his or her reasons therefor.

20 (d) For the purposes of this section, "bulk reinsurance"
21 means any quota share, surplus aid or portfolio reinsu-
22 rance agreement which, of itself or in combination with
23 other similar agreements, assumes fifty-one percent or
24 more of the liability of the reinsured company.

25 (e) Any contract of reinsurance whereby a domestic
26 stock or mutual insurer cedes more than seventy-five
27 percent of the total of its outstanding insurance
28 liabilities shall be subject to the approval, in writing, by
29 the commissioner.

30 (f) A filing shall not be made pursuant to this section
31 unless the reinsurance agreement be certified under
32 oath by responsible officers of the reinsurer and the
33 reinsured to contain the entire agreement between the
34 parties to the reinsurance agreement.

35 (g) Credit for reinsurance shall be subject to the
36 provisions of section fifteen, article four of this chapter.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

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

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

6 That the insurer:

7 (a) Is impaired or insolvent.

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

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

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

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

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

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

43 (h) Has consented to such an order through a majority

44 of its directors, stockholders, members or subscribers.

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

52 (j) Has been deemed in hazardous financial condition
53 pursuant to the provisions of article thirty-four-a of this
54 chapter.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3d. Medicare supplement insurance.

1 (a) *Definitions:*

2 (1) "Applicant" means, in the case of a group medicare
3 supplement policy or subscriber contract, the proposed
4 certificate holder.

5 (2) "Certificate" means, for the purposes of this
6 section, any certificate issued under a group medicare
7 supplement policy, which policy has been delivered or
8 issued for delivery in this state.

9 (3) "Medicare supplement policy" means a group
10 policy of accident and sickness insurance or a subscriber
11 contract (of hospital and medical service associations)
12 which is advertised, marketed or designed primarily as
13 a supplement to reimbursements under medicare for the
14 hospital, medical or surgical expenses of persons eligible
15 for medicare. Such term does not include:

16 (A) A policy or contract of one or more employers or
17 labor organizations, or of the trustees of a fund
18 established by one or more employers or labor organ-
19 izations, or a combination thereof, for employees or
20 former employees, or combination thereof, or for
21 members or former members, or combination thereof,
22 of the labor organizations, or

23 (B) A policy or contract of any professional, trade or
24 occupational association for its members or former or

25 retired members, or combination thereof, if such
26 association is composed of individuals all of whom are
27 actively engaged in the same profession, trade or
28 occupation; has been maintained in good faith for
29 purposes other than obtaining insurance; and has been
30 in existence for at least two years prior to the date of
31 its initial offering of such policy or plan to its members.

32 (C) Individual policies or contracts issued pursuant to
33 a conversion privilege under a policy or contract of
34 group or individual insurance when such group or
35 individual policy or contract includes provisions which
36 are inconsistent with the requirements of this section.

37 (4) "Medicare" means the Health Insurance for the
38 Aged Act, Title XVIII of the Social Security Amend-
39 ments of 1965, as then constituted or later amended.

40 (b) *Standards for policy provisions:*

41 (1) The commissioner shall issue reasonable rules to
42 establish specific standards for policy provisions of
43 medicare supplement policies. Such standards shall be
44 in addition to and in accordance with the applicable
45 laws of this state and may cover, but shall not be limited
46 to:

47 (A) Terms of renewability;

48 (B) Initial and subsequent conditions of eligibility;

49 (C) Nonduplication of coverage;

50 (D) Probationary period;

51 (E) Benefit limitations, exceptions and reductions;

52 (F) Elimination period;

53 (G) Requirements for replacement;

54 (H) Recurrent conditions; and

55 (I) Definitions of terms.

56 (2) The commissioner may issue reasonable rules that
57 specify prohibited policy provisions not otherwise
58 specifically authorized by statute which, in the opinion
59 of the commissioner, are unjust, unfair or unfairly

60 discriminatory to any person insured or proposed for
61 coverage under a medicare supplement policy.

62 (3) Notwithstanding any other provisions of the law,
63 a medicare supplement policy may not deny a claim for
64 losses incurred more than six months from the effective
65 date of coverage for a preexisting condition. The policy
66 may not define a preexisting condition more restric-
67 tively than a condition for which medical advice was
68 given or treatment was recommended by or received
69 from a physician within six months before the effective
70 date of coverage.

71 (c) *Minimum standards for benefits.*

72 The commissioner shall issue reasonable rules to
73 establish minimum standards for benefits under med-
74 icare supplement policies.

75 (d) *Loss ratio standards.*

76 Medicare supplement policies shall be expected to
77 return to policyholders benefits which are reasonable in
78 relation to the premium charge. The commissioner shall
79 issue reasonable rules to establish minimum standards
80 for loss ratios and medicare supplement policies on the
81 basis of incurred claims experience and earned premi-
82 ums for the entire period for which rates are computed
83 to provide coverage and in accordance with accepted
84 actuarial principles and practices. For purposes of rules
85 issued pursuant to this paragraph, medicare supplement
86 policies issued as a result of solicitations of individuals
87 through the mail or mass media advertising, including
88 both print and broadcast advertising, shall be treated
89 as individual policies.

90 (e) *Disclosure standards:*

91 (1) In order to provide for full and fair disclosure in
92 the sale of accident and sickness policies, to persons
93 eligible for medicare, the commissioner may require by
94 rule that no policy of accident and sickness insurance
95 may be issued for delivery in this state and no certificate
96 may be delivered pursuant to such a policy unless an
97 outline of coverage is delivered to the applicant at the
98 time application is made.

99 (2) The commissioner shall prescribe the format and
100 content of the outline of coverage required by paragraph
101 one. For purposes of this paragraph, "format" means
102 style, arrangements and overall appearance, including
103 such items as size, color and prominence of type and the
104 arrangement of text and captions. Such outline of
105 coverage shall include:

106 (A) A description of the principal benefits and
107 coverage provided in the policy;

108 (B) A statement of the exceptions, reductions and
109 limitations contained in the policy;

110 (C) A statement of the renewal provisions including
111 any reservation by the insurer of the right to change
112 premiums;

113 (D) A statement that the outline of coverage is a
114 summary of the policy issued or applied for and that the
115 policy should be consulted to determine governing
116 contractual provisions.

117 (3) The commissioner may prescribe by rule a
118 standard form and the contents of an informational
119 brochure for persons eligible for medicare, which is
120 intended to improve the buyer's ability to select the most
121 appropriate coverage and improve the buyer's under-
122 standing of medicare. Except in the case of direct
123 response insurance policies, the commissioner may
124 require by rule that the information brochure be
125 provided to any prospective insureds eligible for
126 medicare concurrently with delivery of the outline of
127 coverage. With respect to direct response insurance
128 policies, the commissioner may require by rule that the
129 prescribed brochure be provided upon request to any
130 prospective insureds eligible for medicare, but in no
131 event later than the time of policy delivery.

132 (4) The commissioner may further promulgate rea-
133 sonable rules to govern the full and fair disclosure of the
134 information in connection with the replacement of
135 accident and sickness policies, subscriber contracts or
136 certificates by persons eligible for medicare.

137 (f) *Notice of free examination.*

138 Medicare supplement policies or certificates, other
139 than those issued pursuant to direct response solicita-
140 tion, shall have a notice prominently printed on the first
141 page of the policy or attached thereto stating in
142 substance that the applicant shall have the right to
143 return the policy of certificate within ten days from its
144 delivery and have the premium refunded if, after
145 examination of the policy or certificate, the applicant is
146 not satisfied for any reason. Medicare supplement
147 policies or certificates issued pursuant to a direct
148 response solicitation to persons eligible for medicare
149 shall have a notice prominently printed on the first page
150 or attached thereto stating in substance that the
151 applicant shall have the right to return the policy or
152 certificate within thirty days of its delivery and to have
153 the premium refunded if, after examination, the
154 applicant is not satisfied for any reason.

155 (g) *Administrative procedures.*

156 Rules promulgated pursuant to this section shall be
157 subject to the provisions of chapter twenty-nine-a (West
158 Virginia Administrative Procedures Act).

159 (h) *Separability.*

160 If any provision of this section or the application
161 thereof to any person or circumstance is for any reason
162 held to be invalid, the remainder of the section and the
163 application of such provision to other persons or
164 circumstances shall not be affected thereby.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

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

1 Each company to the same extent such provisions are
2 applicable to domestic mutual insurers shall be gov-
3 erned by and be subject to the following articles of this
4 chapter: Article one (definitions), article two (insurance
5 commissioner), article four (general provisions) except
6 that section sixteen of article four shall not be applicable
7 thereto, article seven (assets and liabilities), article ten
8 (rehabilitation and liquidation) except that under the
9 provisions of section thirty-two of said article ten

10 assessments shall not be levied against any former
 11 member of a farmers' mutual fire insurance company
 12 who is no longer a member of the company at the time
 13 the order to show cause was issued, article eleven (unfair
 14 trade practices), article twelve (agents, brokers and
 15 solicitors) except that the agent's license fee shall be five
 16 dollars, article twenty-six (West Virginia Insurance
 17 Guaranty Association Act), article twenty-seven (insu-
 18 rance holding company systems), article thirty (mine
 19 subsidence insurance) except that under the provisions
 20 of section six, article thirty, a farmers' mutual insurance
 21 company shall have the option of offering mine subsi-
 22 dence coverage to all of its policyholders but shall not
 23 be required to do so, article thirty-three (annual audited
 24 financial report), article thirty-four (administrative
 25 supervision), article thirty-four-a, (standards and
 26 commissioner's authority for companies deemed to be in
 27 hazardous financial condition), article thirty-five,
 28 (criminal sanctions for failure to report impairment),
 29 article thirty-six (business transacted with producer-
 30 controlled property/casualty insurer) and article thirty-
 31 seven (managing general agents); but only to the extent
 32 these provisions are not inconsistent with the provisions
 33 of this article.

§33-22-13. Reinsurance; joint policies.

1 (a) Such company may procure reinsurance or issue
 2 policies of reinsurance to other licensed insurers
 3 transacting like kinds of insurance, subject to the
 4 provisions of section fifteen, article four of this chapter.

5 (b) Two or more such companies may issue policies
 6 jointly.

§33-22-18. Mergers and consolidations.

1 (a) A farmers' mutual fire insurance company shall
 2 not merge or consolidate with any stock insurer.

3 (b) A farmers' mutual fire insurance company may
 4 merge or consolidate with another farmers' mutual fire
 5 insurance company or merge into a domestic mutual
 6 insurer in the manner provided in section twenty-eight,
 7 article five of this chapter for the merger or consolida-

8 tion of other types of domestic mutual insurers. In the
9 event of a merger between a farmers' mutual fire
10 insurance company and a domestic mutual insurer, the
11 domestic mutual insurer shall be the surviving entity.

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 insu-
11 rance), 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), article thirty-five (criminal sanc-
18 tions for failure to report impairment), and article
19 thirty-seven (managing general agents).

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

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

1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are
5 applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions as hereinbelow indicated, of the following
9 articles of this chapter: Article two (insurance commis-
10 sioner), except that under section nine of article two

11 examinations shall be conducted at least once every four
12 years, article four (general provisions) except that
13 section sixteen of article four shall not be applicable
14 thereto, article six, section thirty-four (fee for form and
15 rate filing), article six-c (guaranteed loss ratio), article
16 seven (assets and liabilities), article eleven (unfair trade
17 practices), article twelve (agents, brokers and solicitors)
18 except that the agent's license fee shall be five dollars,
19 section fourteen, article fifteen (individual accident and
20 sickness insurance), article fifteen-a (long-term care
21 insurance), section three-a, article sixteen (mental
22 illness), section three-c, article sixteen (group accident
23 and sickness insurance), section three-d, article sixteen
24 (medicare supplement insurance), section three-f, article
25 sixteen (treatment of temporomandibular joint disorder
26 and craniomandibular disorder), article sixteen-c (small
27 employer group policies), article sixteen-d (marketing
28 and rate practices for small employers), article twenty-
29 six-a (West Virginia life and health insurance guaranty
30 association act), after the first day of October, one
31 thousand nine hundred ninety-one, article twenty-seven
32 (insurance holding company systems), article twenty-
33 eight (individual accident and sickness insurance
34 minimum standards), article thirty-three (annual
35 audited financial report), article thirty-four (administra-
36 tive supervision), article thirty-four-a, (standards and
37 commissioner's authority for companies deemed to be in
38 hazardous financial condition), article thirty-five,
39 (criminal sanctions for failure to report impairment)
40 and article thirty seven (managing general agents); and
41 no other provision of this chapter may apply to such
42 corporations unless specifically made applicable by the
43 provisions of this article. If, however, any such corpo-
44 ration is converted into a corporation organized for a
45 pecuniary profit, or if it transacts business without
46 having obtained a license as required by section five of
47 this article, it shall thereupon forfeit its right to these
48 exemptions.

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

1 The commissioner may apply to the court for an order
2 appointing him or her as receiver of and directing him

3 or her to rehabilitate a corporation upon one or more
4 of the following grounds. That the corporation:

5 (a) Is impaired or insolvent.

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

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

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

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

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

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

40 (h) Has consented to such an order through a majority

41 of its directors, stockholders, members or subscribers.

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

49 (j) Has been deemed in hazardous financial condition
50 pursuant to the provisions of article thirty-four-a of this
51 chapter.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.

1 Corporations organized under this article shall be
2 subject to supervision and regulation of 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 four (general provisions) except that
10 section sixteen of article four shall not be applicable
11 thereto, article six-c (guaranteed loss ratio), article
12 seven, (assets and liabilities), article eight (investments),
13 article ten (rehabilitation and liquidation), section
14 fourteen, article fifteen (individual accident and sick-
15 ness insurance), article sixteen-c (small employer group
16 policies), article sixteen-d (marketing and rate practices
17 for small employers), article twenty-six-a (West Virginia
18 life and health insurance guaranty association act),
19 article twenty-seven (insurance holding company sys-
20 tems), article thirty-three (annual audited financial
21 report), article thirty-four-a (standards and commissioner's
22 authority for companies deemed to be in hazardous
23 financial condition), article thirty-five (criminal sanc-
24 tions for failure to report impairment) and article
25 thirty-seven (managing general agents); and no other
26 provision of this chapter may apply to such corporations

27 unless specifically made applicable by the provisions of
28 this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

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

1 (a) 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.

13 (b) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums
15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional
17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its
19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained
22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider, or makes any qualitative judgment
25 concerning any provider.

26 (c) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (d) The provisions of section fifteen, article four
32 (general provisions), article six-c (guaranteed loss ratio),
33 article seven (assets and liabilities), article eight
34 (investments), section fourteen, article fifteen (individ-

35 ual accident and sickness insurance), section three-f,
 36 article sixteen (treatment of temporomandibular dis-
 37 order and craniomandibular disorder), article sixteen-c
 38 (small employer group policies), article sixteen-d
 39 (marketing and rate practices for small employers),
 40 article twenty-seven (insurance holding company sys-
 41 tems), article thirty-four-a (standards and commission-
 42 er's authority for companies deemed to be in hazardous
 43 financial condition), article thirty-five (criminal sanc-
 44 tions for failure to report impairment) and article
 45 thirty-seven (managing general agents) shall be appli-
 46 cable to any health maintenance organization granted a
 47 certificate of authority under this article.

48 (e) Any long-term care insurance policy delivered or
 49 issued for delivery in this state by a health maintenance
 50 organization shall comply with the provisions of article
 51 fifteen-a of this chapter.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2. Definitions.

1 As used in this article:

2 (a) An "affiliate" of, or person "affiliated" with, a
 3 specific person, is a person that, directly or indirectly
 4 through one or more intermediaries, controls, or is
 5 controlled by, or is under common control with, the
 6 person specified.

7 (b) "Commissioner" means the insurance commis-
 8 sioner, his or her deputies, or the insurance department,
 9 as appropriate.

10 (c) "Control" (including the terms "controlling,"
 11 "controlled by" and "under common control with")
 12 means the possession, direct or indirect, of the power to
 13 direct or cause the direction of the management and
 14 policies of a person, whether through the ownership of
 15 voting securities, by contract other than a commercial
 16 contract for goods or nonmanagement services, or
 17 otherwise, unless the power is the result of an official
 18 position with or corporate office held by the person.
 19 Control shall be presumed to exist if any person, directly
 20 or indirectly, owns, controls, holds with the power to

21 vote, or holds proxies representing ten percent or more
22 of the voting securities of any other person or controls
23 or appoints a majority of the board of directors, voting
24 members or similar governing body of any other person.
25 This presumption may be rebutted by a showing made
26 in the manner provided by subsection (b)(i), section four
27 of this article that control does not exist in fact. The
28 commissioner may determine, after furnishing all
29 persons in interest notice and opportunity to be heard
30 and making specific findings of fact to support such
31 determination, that control exists in fact, notwithstand-
32 ing the absence of a presumption to that effect.

33 (d) "Insurance holding company system" consists of
34 two or more affiliated persons, one or more of which is
35 an insurer.

36 (e) "Insurer" means any person or persons or corpo-
37 ration, partnership or company authorized by the laws
38 of this state to transact the business of insurance in this
39 state, except that it shall not include agencies, author-
40 ities or instrumentalities of the United States, its
41 possessions and territories, the commonwealth of Puerto
42 Rico, the District of Columbia, or a state or political
43 subdivision of a state.

44 (f) A "person" is an individual, a corporation, a
45 partnership, an association, a joint-stock company, a
46 trust, an unincorporated organization, any other legal
47 entity or any combination of the foregoing acting in
48 concert, but does not include any securities broker
49 performing no more than the usual and customary
50 broker's function and holding less than twenty percent
51 of the voting securities of an insurance company or of
52 any person which controls an insurance company.

53 (g) A "security holder" of a specified person is one who
54 owns any security of such person, including common
55 stock, preferred stock, debt obligations and any other
56 security convertible into or evidencing the right to
57 acquire any of the foregoing.

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

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

§33-27-2a. Subsidiaries of insurers; authorization; investment authority; exemptions; qualifications; cessation of controls.

1 (a) Any domestic insurer, either by itself or in
2 cooperation with one or more persons, may organize or
3 acquire one or more subsidiaries engaged in the
4 following kinds of business with the commissioner's
5 prior approval:

6 (1) Any kind of insurance business authorized by the
7 jurisdiction in which it is incorporated;

8 (2) Acting as an insurance agent for its parent or for
9 any of its parent's insurer subsidiaries;

10 (3) Investing, reinvesting or trading in securities for
11 its own account, that of its parent, any subsidiary of its
12 parent, or any affiliate or subsidiary;

13 (4) Management of any investment company subject
14 to or registered pursuant to the Investment Company
15 Act of 1940, as amended, including related sales and
16 services;

17 (5) Acting as a broker-dealer subject to or registered
18 pursuant to the Securities Exchange Act of 1934, as
19 amended;

20 (6) Rendering investment advice to governments,
21 government agencies, corporations or other organiza-
22 tions or groups;

23 (7) Rendering other services related to the operations
24 of an insurance business, including, but not limited to,
25 actuarial, loss prevention, safety engineering, data
26 processing, accounting, claims, appraisal and collection
27 services;

28 (8) Ownership and management of assets which the
29 parent corporation could itself own or manage;

30 (9) Acting as administrative agent for a governmental
31 instrumentality which is performing an insurance
32 function;

33 (10) Financing of insurance premiums, agents and
34 other forms of consumer financing;

35 (11) Any other business activity determined by the
36 commissioner to be reasonably ancillary to an insurance
37 business; and

38 (12) Owning a corporation or corporations engaged or
39 organized to engage exclusively in one or more of the
40 businesses specified in this section.

41 (b) In addition to investments in common stock,
42 preferred stock, debt obligations and other securities
43 permitted under any other provision of this chapter, a
44 domestic insurer may also with the commissioner's prior
45 approval:

46 (1) Invest in common stock, preferred stock, debt
47 obligations and other securities of one or more subsidiar-
48 ies, amounts which do not exceed the lesser of ten
49 percent of such insurer's assets or fifty percent of such
50 insurer's surplus as regards policyholders: *Provided,*
51 That after such investments, the insurer's surplus as
52 regards policyholders will be reasonable in relation to
53 the insurer's outstanding liabilities and adequate to its
54 financial needs. In calculating the amount of such
55 investments, investments in domestic or foreign insu-
56 rance subsidiaries shall be excluded, and there shall be
57 included:

58 (A) Total net moneys or other consideration expended
59 and obligations assumed in the acquisition or formation
60 of a subsidiary, including all organizational expenses
61 and contributions to capital and surplus of such
62 subsidiary whether or not represented by the purchase
63 of capital stock or issuance of other securities, and

64 (B) All amounts expended in acquiring additional
65 common stock, preferred stock, debt obligations and
66 other securities, and all contributions to the capital or
67 surplus, of a subsidiary subsequent to its acquisition or
68 formation;

69 (2) Invest any amount in common stock, preferred
70 stock, debt obligations and other securities of one or
71 more subsidiaries engaged or organized to engage

72 exclusively in the ownership and management of assets
73 authorized as investments for the insurer: *Provided*,
74 That each such subsidiary agrees to limit its invest-
75 ments in any asset so that such investments will not
76 cause the amount of the total investment of the insurer
77 to exceed any of the investment limitations specified in
78 subsection (b)(1) of this section or in article eight of this
79 chapter applicable to the insurer. For the purpose of this
80 subdivision, “the total investment of the insurer”
81 includes:

82 (A) Any direct investment by the insurer in an asset;
83 and

84 (B) The insurer’s proportionate share of any invest-
85 ment in an asset by any subsidiary of the insurer, which
86 shall be calculated by multiplying the amount of the
87 subsidiary’s investment by the percentage of the
88 ownership of such subsidiary.

89 (3) With the approval of the commissioner, invest any
90 greater amount in common stock, preferred stock, debt
91 obligations or other securities of one or more subsidiar-
92 ies: *Provided*, That after such investment the insurer’s
93 surplus as regards policyholders will be reasonable in
94 relation to the insurer’s outstanding liabilities and
95 adequate to its financial needs.

96 (c) Investments in common stock, preferred stock,
97 debt obligations or other securities of subsidiaries made
98 pursuant to subsection (b) of this section shall not be
99 subject to any of the otherwise applicable restrictions or
100 prohibitions contained in this chapter applicable to such
101 investments of insurers except section twenty-one,
102 article eight of this chapter.

103 (d) Whether any investment pursuant to subsection (a)
104 or (b) of this section meets the applicable requirements
105 thereof is to be determined before such investment is
106 made, by calculating the applicable investment limita-
107 tions as though the investment had already been made,
108 taking into account the then outstanding principal
109 balance on all previous investments in debt obligations,
110 and the value of all previous investments in equity
111 securities as of the day they were made, net of any

112 return of capital invested, not including dividends.

113 (e) If an insurer ceases to control a subsidiary, it shall
114 dispose of any investment therein made pursuant to this
115 section within three years from the time of the cessation
116 of control or within such further time as the commis-
117 sioner may prescribe, unless at any time after such
118 investment shall have been made, such investment shall
119 have met the requirements for investment under any
120 other provision of this chapter, and the insurer has
121 notified the commissioner thereof.

**§33-27-3. Acquisition of control of or merger with
domestic insurer; filing requirements; state-
ments; alternative filing material; approval
by the commissioner; hearings; notice; mail-
ings to shareholders; expenses; exemptions;
violations and jurisdiction.**

1 (a) Any person other than the issuer shall not make
2 a tender offer for or a request or invitation for tenders
3 of, or enter into any agreement to exchange securities
4 for, seek to acquire or acquire, in the open market or
5 otherwise, any voting security of a domestic insurer if,
6 after the consummation thereof, such person would,
7 directly or indirectly (or by conversion or by exercise of
8 any right to acquire) be in control of such insurer, and
9 a person shall not enter into an agreement to merge with
10 or otherwise to acquire control of a domestic insurer or
11 any person controlling a domestic insurer unless, at the
12 time any such offer, request or invitation is made or any
13 such agreement is entered into, or prior to the acqui-
14 sition of such securities if no offer or agreement is
15 involved, such person has filed with the commissioner
16 and has sent to such insurer, and, to the extent
17 permitted by applicable federal laws, rules and regula-
18 tions, such insurer has sent to its shareholders a
19 statement containing the information required by this
20 section and such offer, request, invitation, agreement or
21 acquisition has been approved by the commissioner in
22 the manner hereinafter prescribed.

23 (b) For purposes of this section, a "domestic insurer"
24 includes any other person controlling a domestic insurer

25 unless such other person as determined by the commis-
26 sioner is either directly or through its affiliates
27 primarily engaged in business other than the business
28 of insurance.

29 (c) The statement to be filed with the commissioner
30 hereunder shall be made under oath or affirmation and
31 shall contain the following information:

32 (1) The name and address of each person by whom or
33 on whose behalf the merger or other acquisition of
34 control referred to in subsection (a) is to be effected
35 (hereinafter called "acquiring party"), and

36 (2) If such person is an individual, his or her principal
37 occupation and all offices and positions held during the
38 past five years, and any conviction of crimes other than
39 minor traffic violations during the past ten years;

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

52 (4) The source, nature and amount of the consideration
53 used or to be used in effecting the merger or other
54 acquisition of control, a description of any transaction
55 wherein funds were or are to be obtained for any such
56 purpose, including any pledge of the insurer's stock, or
57 the stock of any of its subsidiaries or controlling
58 affiliates, and the identity of persons furnishing such
59 consideration: *Provided*, That where a source of such
60 consideration is a loan made in the lender's ordinary
61 course of business, the identity of the lender shall
62 remain confidential, if the person filing such statement
63 so requests.

64 (5) Fully audited financial information as to the
65 earnings and financial condition of each acquiring party
66 for the preceding five fiscal years of each such acquiring
67 party (or for such lesser period as such acquiring party
68 and any predecessors thereof shall have been in
69 existence), and similar unaudited information as of a
70 date not earlier than ninety days prior to the filing of
71 the statement.

72 (6) Any plans or proposals which each acquiring party
73 may have to liquidate such insurer, to sell its assets or
74 merge or consolidate it with any person, or to make any
75 other material change in its business or corporate
76 structure or management.

77 (7) The number of shares of any security referred to
78 in subsection (a) which each acquiring party proposes
79 to acquire, and the terms of the offer, request, invitation,
80 agreement or acquisition referred to in subsection (a),
81 and a statement as to the method by which the fairness
82 of the proposal was arrived at.

83 (8) The amount of each class of any security referred
84 to in subsection (a) which is beneficially owned or
85 concerning which there is a right to acquire beneficial
86 ownership by each acquiring party.

87 (9) A full description of any contracts, arrangements
88 or understanding with respect to any security referred
89 to in subsection (a) in which any acquiring party is
90 involved, including, but not limited to, transfer of any
91 of the securities, joint ventures, loan or option arrange-
92 ments, puts or calls, guarantees of loans, guarantees
93 against loss or guarantees of profits, division of losses
94 or profits, or the giving or withholding of proxies. Such
95 description shall identify the persons with whom such
96 contracts, arrangements or understandings have been
97 entered into.

98 (10) A description of the purchase of any security
99 referred to in subsection (a) during the twelve calendar
100 months preceding the filing of the statement, by any
101 acquiring party, including the dates of purchase, names
102 of the purchasers, and consideration paid or agreed to
103 be paid therefor.

104 (11) A description of any recommendations to pur-
105 chase any security referred to in subsection (a) made
106 during the twelve calendar months preceding the filing
107 of the statement, by an acquiring party, or by anyone
108 based upon interviews or at the suggestion of such
109 acquiring party.

110 (12) Copies of all tender offers for, requests or
111 invitations for tenders of, exchange offers for, and
112 agreements to acquire or exchange any securities
113 referred to in subsection (a), and (if distributed) of
114 additional soliciting material relating thereto.

115 (13) The terms of any agreement, contract or under-
116 standing made with any broker-dealer as to solicitation
117 of securities referred to in subsection (a) for tender, and
118 the amount of any fees, commissions or other compen-
119 sation to be paid to broker-dealers with regard thereto.

120 (14) Such additional information as the commissioner
121 may by rule prescribe as necessary or appropriate for
122 the protection of policyholders and security holders of
123 the insurer or in the public interest.

124 (d) If the person required to file the statement
125 referred to in subsection (a) is a partnership, limited
126 partnership, syndicate or other group, the commissioner
127 may require that the information called for by subdivi-
128 sions (1) through (14) of this subsection shall be given
129 with respect to each partner of such partnership or
130 limited partnership, each member of such syndicate or
131 group, and each person who controls such partner or
132 member. If any partner, member or person is a
133 corporation or the person required to file the statement
134 referred to in subsection (a) is a corporation, the
135 commissioner may require that the information called
136 for by subdivisions (1) through (14) shall be given with
137 respect to such corporation, and each person who is
138 directly or indirectly the beneficial owner of more than
139 ten percent of the outstanding voting securities of such
140 corporation.

141 (e) If any material change occurs in the facts set forth
142 in the statement filed with the commissioner and sent
143 to such insurer pursuant to this section, an amendment

144 setting forth such change, together with copies of all
145 documents and other material relevant to such change,
146 shall be filed with the commissioner and sent to such
147 insurer within two business days after the person learns
148 of such change. Such insurer shall send such amend-
149 ment to its shareholders.

150 (f) If any offer, request, invitation, agreement or
151 acquisition referred to in subsection (a) is proposed to
152 be made by means of a registration statement under the
153 Securities Act of 1933 or in circumstances requiring the
154 disclosure of similar information under the Securities
155 Exchange Act of 1934, or under a state law requiring
156 similar registration or disclosure, the person required to
157 file the statement referred to in subsection (a) may
158 utilize such documents in furnishing the information
159 called for by that statement.

160 (g) The commissioner shall approve any merger or
161 other acquisition of control referred to in subsection (a)
162 unless, after a public hearing thereon, he or she finds
163 that any of the following conditions exists:

164 (1) After the change of control the domestic insurer
165 referred to in subsection (a) would not be able to satisfy
166 the requirements for the issuance of a license to write
167 the line or lines of insurance for which it is presently
168 authorized;

169 (2) The effect of the merger or other acquisition of
170 control would be substantially to lessen competition in
171 insurance in this state or tend to create a monopoly
172 therein;

173 (3) The financial condition of any acquiring party is
174 such as might jeopardize the financial stability of the
175 insurer, or prejudice the interest of its policyholders or
176 the interests of any remaining security holders who are
177 unaffiliated with such acquiring party;

178 (4) The terms of the offer, request, invitation, agree-
179 ment or acquisition referred to in subsection (a) are
180 unfair and unreasonable to the security holders of the
181 insurer;

182 (5) The plans or proposals which the acquiring party

183 has to liquidate the insurer, sell its assets or consolidate
184 or merge it with any person, or to make any other
185 material change in its business or corporate structure
186 or management, are unfair and unreasonable to policy-
187 holders of the insurer and not in the public interest;

188 (6) The competence, experience and integrity of those
189 persons who would control the operation of the insurer
190 are such that it would not be in the interest of
191 policyholders of the insurer and of the public to permit
192 the merger or other acquisition of control; or

193 (7) The acquisition is likely to be hazardous or
194 prejudicial to the insurance-buying public.

195 (h) The public hearing required by this section shall
196 be held within sixty days after the statement required
197 by subsection (a) is filed, and at least fifteen days' notice
198 thereof shall be given by the commissioner to the person
199 filing the statement. Not less than seven days' notice of
200 such public hearing shall be given by the person filing
201 the statement to the insurer and to such other persons
202 as may be designated by the commissioner. The insurer
203 shall give such notice to its security holders. The
204 commissioner shall make a determination within forty-
205 five days after the conclusion of such hearing.

206 (i) The commissioner may retain at the acquiring
207 person's expense any attorneys, actuaries, accountants
208 and other experts not otherwise a part of the commis-
209 sioner's staff as may be reasonably necessary to assist
210 the commissioner in reviewing the proposed acquisition
211 of control.

212 (j) To the extent permitted by applicable federal laws,
213 rules and regulations, all statements, amendments or
214 other material filed pursuant to the provisions of this
215 section, and all notices of public hearings held pursuant
216 to the provisions of this section, shall be mailed by the
217 insurer to its shareholders within five business days
218 after the insurer has received such statements, amend-
219 ments, other material or notices. The expenses of
220 mailing shall be borne by the person making the filing.
221 As security for the payment of such expenses, such
222 person shall file with the commissioner an acceptable

223 bond or other deposit in an amount to be determined by
224 the commissioner.

225 (k) The provisions of this section shall not apply to any
226 offer, request, invitation, agreement or acquisition
227 which the commissioner by order shall exempt there-
228 from as (1) not having been made or entered into for the
229 purpose of, and not having the effect of, changing or
230 influencing the control of a domestic insurer; or (2) as
231 otherwise not comprehended within the purposes of this
232 section.

233 (l) The following are violations of this section:

234 (1) The failure to file any statement, amendment or
235 other material required to be filed pursuant to subsec-
236 tion (a) or (b) of this section; or

237 (2) The effectuation or any attempt to effectuate an
238 acquisition of control of, or merger with, a domestic
239 insurer unless the commissioner has given his or her
240 approval thereto.

241 (m) The courts of this state are hereby vested with
242 jurisdiction over every person not resident, domiciled or
243 authorized to do business in this state who files a
244 statement with the commissioner under this section, and
245 over all actions involving such person arising out of
246 violations of this section, and each such person shall be
247 deemed to have performed acts equivalent to and
248 constituting an appointment by such a person of the
249 secretary of state to be his or her true and lawful
250 attorney upon whom may be served all lawful process
251 in any action, suit or proceeding arising out of violations
252 of this section. Copies of all such lawful process shall be
253 served on the secretary of state and transmitted by
254 registered or certified mail by the secretary of state to
255 such person at his or her last known address.

**§33-27-4. Registration of insurers; forms required;
materiality; amendments reporting of divi-
dends; information of insurers; termination
of registration; consolidated filing;
violations.**

1 (a) Every insurer which is authorized to do business

2 in this state and which is a member of an insurance
3 holding company system shall register with the commis-
4 sioner, except a foreign insurer subject to disclosure
5 requirements and standards adopted by statute or
6 regulation in the jurisdiction of its domicile which are
7 substantially similar to those contained in this section.
8 Any insurer which is subject to registration under this
9 section shall register within sixty days after the
10 effective date of this article or fifteen days after it
11 becomes subject to registration, whichever is later, and
12 annually thereafter by June first of each year for the
13 previous calendar year, unless the commissioner for
14 good cause shown extends the time for registration, and
15 then within such extended time. The commissioner may
16 require any authorized insurer which is a member of a
17 holding company system which is not subject to regis-
18 tration under this section to furnish a copy of the
19 registration statement, the summary described in
20 subsection (c) of this section, or other information filed
21 by such insurance company with the insurance regula-
22 tory authority of domiciliary jurisdiction.

23 (b) Every insurer subject to registration shall file a
24 registration statement on a form prescribed by the
25 national association of insurance commissioners, which
26 shall contain current information about:

27 (1) The capital structure, general financial condition,
28 ownership and management of the insurer and any
29 person controlling the insurer.

30 (2) The identity and relationship of every member of
31 the insurance holding company system.

32 (3) The following agreements in force, relationships
33 subsisting, and transactions currently outstanding or
34 which have occurred during the last calendar year
35 between such insurer and its affiliates:

36 (A) Loans, other investments, or purchases, sales or
37 exchanges of securities of the affiliates by the insurer
38 or of the insurer by its affiliates;

39 (B) Purchases, sales or exchanges of assets;

40 (C) Transactions not in the ordinary course of

41 business;

42 (D) Guarantees or undertakings for the benefit of an
43 affiliate which result in an actual contingent exposure
44 of the insurer's assets to liability, other than insurance
45 contracts entered into in the ordinary course of the
46 insurer's business;

47 (E) All management and service contracts and all
48 cost-sharing arrangements, other than cost allocation
49 arrangements based upon generally accepted account-
50 ing principles;

51 (F) Reinsurance agreements covering all or substan-
52 tially all of one or more lines of insurance of the ceding
53 company;

54 (G) Dividends and other distributions to shareholders;
55 and

56 (H) Any pledge of the insurer's stock, including stock
57 of any subsidiary or controlling affiliate, for a loan made
58 to any member of the insurance holding company
59 system.

60 (4) Other matters concerning transactions between
61 registered insurers and any affiliates as may be
62 included from time to time in any registration forms
63 adopted or approved by the commissioner.

64 (c) All registration statements shall contain a sum-
65 mary outlining all items in the current registration
66 statement representing changes from the prior registra-
67 tion statement.

68 (d) Information need not be disclosed on the registra-
69 tion statement filed pursuant to subsection (b) of this
70 section if such information is not material for the
71 purpose of this section. Unless the commissioner by rule
72 or order provides otherwise, sales, purchases, ex-
73 changes, loans or extensions of credit, or investments,
74 involving one half of one percent or less of an insurer's
75 admitted assets as of the thirty-first day of December
76 next preceding shall not be deemed material for
77 purposes of this section.

78 (e) Each registered insurer shall keep current the

79 information required to be disclosed in its registration
80 statement by reporting all material changes or additions
81 on amendment forms provided by the commissioner
82 within fifteen days after the end of the month in which
83 it learns of each such change or addition.

84 (f) Subject to subsection (c) of section five of this
85 article, each registered insurer shall report to the
86 commissioner all dividends and other distributions to
87 shareholders within fifteen business days following the
88 declaration thereof.

89 (g) Any person within an insurance holding company
90 system subject to registration shall be required to
91 provide complete and accurate information to an
92 insurer, when such information is reasonably necessary
93 to enable the insurer to comply with the provisions of
94 this article.

95 (h) The commissioner shall terminate the registration
96 of any insurer which demonstrates that it no longer is
97 a member of an insurance holding company system.

98 (i) The commissioner may require or allow two or
99 more affiliated insurers subject to registration he-
100 reunder to file a consolidated registration statement or
101 consolidated reports amending their consolidated
102 registration statement or their individual registration
103 statements.

104 (j) The commissioner may allow an insurer which is
105 authorized to do business in this state and which is a
106 part of an insurance holding company system to register
107 on behalf of any affiliated insurer which is required to
108 register under subsection (a) of this section and to file
109 all information and material required to be filed under
110 this section.

111 (k) The provisions of this section shall not apply to any
112 insurer, information or transaction if and to the extent
113 that the commissioner by rule or order shall exempt the
114 same from the provisions of this section.

115 (l) Any person may file with the commissioner a
116 disclaimer of affiliation with any authorized insurer or
117 such a disclaimer may be filed by such insurer or any

118 member of an insurance holding company system. The
119 disclaimer shall fully disclose all material relationships
120 and bases for affiliation between such person and such
121 insurer as well as the basis for disclaiming such
122 affiliation. After a disclaimer has been filed, the insurer
123 shall be relieved of any duty to register or report under
124 this section which may arise out of the insurer's
125 relationship with such person unless and until the
126 commissioner disallows such a disclaimer. The commis-
127 sioner shall disallow such a disclaimer only after
128 furnishing all parties in interest with notice and
129 opportunity to be heard and after making specific
130 findings of fact to support such disallowance.

131 (m) The failure to file a registration statement or any
132 amendment thereto required by this section within the
133 time specified for such filing shall be a violation of this
134 section.

**§33-27-5. Standards; Transactions with affiliates; ade-
quacy of surplus; dividends; domestic
insurers.**

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

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

5 (2) Charges or fees for services performed shall be
6 reasonable;

7 (3) Expenses incurred and payment received shall be
8 allocated to the insurer in conformity with customary
9 insurance accounting practices consistently applied;

10 (4) The books, accounts and records of each party shall
11 be so maintained as to clearly and accurately disclose
12 the precise nature and details of the transactions,
13 including such accounting information as is necessary to
14 support the reasonableness of the charges or fees to the
15 respective parties; and

16 (5) The insurer's surplus as regards policyholders
17 following any dividends or distributions to shareholder
18 affiliates shall be reasonable in relation to the insurer's

19 outstanding liabilities and adequate to its financial
20 needs.

21 (b) For purposes of this article, in determining
22 whether an insurer's surplus as regards policyholders is
23 reasonable in relation to the insurer's outstanding
24 liabilities and adequate to its financial needs, the
25 following factors, among others, shall be considered:

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

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

31 (3) The number and size of risks insured in each line
32 of business;

33 (4) The extent of the geographical dispersion of the
34 insurer's insured risks;

35 (5) The nature and extent of the insurer's reinsurance
36 program;

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

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

41 (8) The surplus as regards policyholders maintained
42 by other comparable insurers;

43 (9) The adequacy of the insurer's reserves; and

44 (10) The quality and liquidity of investments in
45 affiliates. The commissioner may treat any such
46 investment as a disallowed asset for purposes of
47 determining the adequacy of surplus as regards policy-
48 holders whenever in his or her judgment such invest-
49 ment so warrants.

50 (c) An insurer subject to registration under section
51 four of this article shall not pay any extraordinary
52 dividend or make any other extraordinary distribution
53 to its shareholders until (1) thirty days after the
54 commissioner has received notice of the declaration

55 thereof and has not within such period disapproved such
56 payment, or (2) the commissioner shall have approved
57 such payment within such thirty-day period.

58 (d) For purposes of this section, an extraordinary
59 dividend or distribution includes any dividend or
60 distribution of cash or other property, whose fair market
61 value together with that of other dividends or distribu-
62 tions made within the preceding twelve months exceeds
63 the lesser of (1) ten percent of such insurer's surplus as
64 regards policyholders as of the thirty-first day of
65 December next preceding, or (2) the net gain from
66 operations of such insurer, if such insurer is a life
67 insurer, or the net income, if such insurer is not a life
68 insurer, not including realized capital gains, for the
69 twelve-month period ending the thirty-first day of
70 December next preceding, but shall not include pro rata
71 distributions of any class of the insurer's own securities.
72 In determining whether a dividend or distribution is
73 extraordinary, an insurer other than a life insurer may
74 carry forward net income from the previous two
75 calendar years that has not already been paid out as
76 dividends. This carry-forward shall be computed by
77 taking the net income from the second and third
78 preceding calendar years, not including realized capital
79 gains, less dividends paid in the second and immediate
80 preceding calendar years.

81 (e) Notwithstanding any other provision of law, an
82 insurer may declare an extraordinary dividend or
83 distribution which is conditional upon the commission-
84 er's approval thereof, and such a declaration shall confer
85 no rights upon shareholders until (1) the commissioner
86 has approved the payment of such dividend or distribu-
87 tion, or (2) the commissioner has not disapproved such
88 payment within the thirty-day period referred to above.

89 (f) The following transactions involving a domestic
90 insurer and any person in its holding company system
91 may not be entered into unless the insurer has notified
92 the commissioner in writing of its intention to enter into
93 such transaction at least thirty days prior thereto, or
94 such shorter period as the commissioner may permit,
95 and the commissioner has not disapproved it within such

96 period:

97 (1) Sales, purchases, exchanges, loans or extensions of
98 credit, guarantees or investments provided such tran-
99 sactions are equal to or exceed: The lesser of one percent
100 of the insurer's admitted assets or ten percent of surplus
101 as regards policyholders; each as of the thirty-first day
102 of December next preceding;

103 (2) Loans or extensions of credit to any person who is
104 not an affiliate, where the insurer makes such loans or
105 extensions of credit with the agreement or understand-
106 ing that the proceeds of such transactions, in whole or
107 in substantial part, are to be used to make loans or
108 extensions of credit to, purchase assets of, or to make
109 investments in, any affiliate of the insurer making such
110 loans or extensions of credit provided such transactions
111 are equal to or exceed: The lesser of one percent of the
112 insurer's admitted assets or ten percent of surplus as
113 regards policyholders; each as of the thirty-first day of
114 December next preceding;

115 (3) Reinsurance agreements or modifications thereto
116 in which the reinsurance premium or a change in the
117 insurer's liabilities equals or exceeds five percent of the
118 insurer's surplus as regards policyholders, as of the
119 thirty-first day of December next preceding, including
120 those agreements which may require as consideration
121 the transfer of assets from an insurer to a nonaffiliate,
122 if an agreement or understanding exists between the
123 insurer and nonaffiliate that any portion of such assets
124 will be transferred to one or more affiliates of the
125 insurer;

126 (4) All management agreements, service contracts and
127 all cost-sharing arrangements not within the ordinary
128 course of business; and

129 (5) Any material transactions, specified by rule, which
130 the commissioner determines may adversely affect the
131 interests of the insurer's policyholders.

132 (g) Nothing contained in subsection (h) herein shall be
133 deemed to authorize or permit any transactions which,
134 in the case of an insurer not a member of the same

135 holding company system, would be otherwise contrary
136 to law.

137 (h) A domestic insurer shall not enter into transactions
138 which are part of a plan or series of like transactions
139 with persons within the holding company system if the
140 purpose of those separate transactions is to avoid the
141 statutory threshold amount and thus avoid the review
142 that would occur otherwise. If the commissioner
143 determines that such separate transactions were entered
144 into over any twelve month period for such purpose, he
145 or she may exercise his or her authority under section
146 nine.

147 (i) The commissioner, in reviewing transactions
148 pursuant to subsection (f) of this section, shall consider
149 whether the transactions comply with the standards set
150 forth in subsection (a) and whether they may adversely
151 affect the interests of policyholders.

152 (j) The commissioner shall be notified within thirty
153 days of any investment of the domestic insurer in any
154 one corporation if the total investment in such corpora-
155 tion by the insurance holding company system exceeds
156 ten percent of such corporation's voting securities.

157 (k) With regard to domestic insurers, the following
158 requirements apply:

159 (1) Notwithstanding the control of a domestic insurer
160 by any person, the officers and directors of the insurer
161 shall not thereby be relieved of any obligation or
162 liability to which they would otherwise be subject by
163 law, and the insurer shall be managed so as to assure
164 its separate operating identity consistent with the
165 provisions of this chapter.

166 (2) Nothing herein shall preclude a domestic insurer
167 from having or sharing a common management or
168 cooperatively, or jointly using personnel, property or
169 services with one or more other persons under arrange-
170 ments meeting the standards of subsection (a) of this
171 section.

§33-27-9. Criminal proceedings; penalties.

1 (a) Any insurer failing, without just cause, to file any
2 registration statement as required by this article shall
3 be required, after notice and hearing, to pay a penalty
4 of up to one thousand dollars for each day's delay, to be
5 recovered by the commissioner. Any penalty so reco-
6 vered shall be paid into the general revenue fund of this
7 state. The commissioner may reduce the penalty if the
8 insurer demonstrates to the commissioner that the
9 imposition of the penalty would constitute a financial
10 hardship to the insurer.

11 (b) Every director or officer of an insurance holding
12 company system who knowingly violates, participates in,
13 or assents to, or who knowingly permits any of the
14 officers or agents of the insurer to engage in transac-
15 tions or make investments which have not been properly
16 reported or submitted pursuant to subsection (a), section
17 four, and subsections (c) and (d) of section five of this
18 article, or which violate any other provision of this
19 article, shall pay, in his or her individual capacity, a
20 civil forfeiture of not more than five thousand dollars
21 per violation, after notice and hearing before the
22 commissioner. In determining the amount of the civil
23 forfeiture, the commissioner shall take into account the
24 appropriateness of the forfeiture with respect to the
25 gravity of the violation, the history of previous viola-
26 tions, and such other matters as justice may require.

27 (c) Whenever it appears to the commissioner that any
28 insurer subject to this article or any director, officer,
29 employee or agent thereof has engaged in any transac-
30 tion or entered into a contract which is subject to section
31 five of this article and which would not have been
32 approved had such approval been requested, the
33 commissioner may order the insurer to cease and desist
34 immediately any further activity under that transaction
35 or contract. After notice and hearing the commissioner
36 may also order the insurer to void any such contracts
37 and restore the status quo if such action is in the best
38 interest of the policyholders, creditors or the public.

39 (d) Whenever it appears to the commissioner that any
40 person or any director, officer, employee or agent
41 thereof has committed a willful violation of this article,

42 the commissioner may cause criminal proceedings to be
43 instituted against such person or the responsible
44 director, officer, employee or agent thereof. Any insurer
45 who willfully violates this article is guilty of a misde-
46 meanor, and, upon conviction thereof, shall be fined not
47 more than ten thousand dollars. Any individual who
48 willfully violates this article is guilty of a misdemeanor,
49 and, upon conviction thereof, shall be fined in his or her
50 individual capacity not more than ten thousand dollars
51 or, if such willful violation involves the deliberate
52 perpetration of a fraud upon the commissioner, is guilty
53 of a felony, and, upon conviction thereof, shall be
54 imprisoned not less than one year nor more than three
55 years, or both fined and imprisoned.

56 (e) Any officer, director or employee of an insurance
57 holding company system who willfully and knowingly
58 subscribes to or makes or causes to be made any false
59 statements or false reports or false filings with the
60 intent to deceive the commissioner in the performance
61 of his or her duties under this article, is guilty of a
62 felony, and, upon conviction thereof, shall be fined not
63 more than ten thousand dollars, or imprisoned not less
64 than one year nor more than three years, or both fined
65 and imprisoned. Any fines imposed pursuant to this
66 subsection shall be paid by the officer, director or
67 employee in his or her individual capacity.

§33-27-13. Recovery.

1 (a) If an order for liquidation or rehabilitation of a
2 domestic insurer has been entered, the receiver ap-
3 pointed under such order shall have a right to recover
4 on behalf of the insurer, (1) from any parent corporation
5 or holding company or person or affiliate who otherwise
6 controlled the insurer, the amount of distributions (other
7 than distributions of shares of the same class of stock)
8 paid by the insurer on its capital stock, or (2) any
9 payment in the form of a bonus, termination settlement
10 or extraordinary lump sum salary adjustment made by
11 the insurer or its subsidiary or subsidiaries to a director,
12 officer or employee, when the distribution or payment
13 pursuant to (1) or (2) is made at any time during the
14 one year preceding the petition for liquidation, conser-

15 vation or rehabilitation, as the case may be, subject to
16 the limitations of subsections (b), (c) and (d) of this
17 section.

18 (b) No such distribution may be recoverable if the
19 parent corporation or affiliate shows that when paid
20 such distribution was lawful and reasonable, and that
21 the insurer did not know and could not reasonably have
22 known that such distribution might adversely affect the
23 ability of the insurer to fulfill its contractual obligations.

24 (c) Any person who was a parent corporation or
25 holding company or a person who otherwise controlled
26 the insurer or affiliate at the time such distributions
27 were paid shall be liable up to the amount of distribu-
28 tions or payments under subsection (a) of this section
29 that such person received. Any person who otherwise
30 controlled the insurer at the time such distributions
31 were declared is liable up to the amount of distributions
32 he or she would have received if they had been paid
33 immediately. If two or more persons are liable with
34 respect to the same distributions, they shall be jointly
35 and severally liable.

36 (d) The maximum amount recoverable under this
37 subsection shall be the amount needed in excess of all
38 other available assets of the impaired or insolvent
39 insurer to pay the contractual obligations of the
40 impaired or insolvent insurer and to reimburse any
41 guaranty funds.

42 (e) To the extent that any person liable under
43 subsection (c) of this section is insolvent or otherwise
44 fails to pay claims due from it pursuant to subsection
45 (c), its parent corporation or holding company or person
46 who otherwise controlled it at the time the distribution
47 was paid, shall be jointly and severally liable for any
48 resulting deficiency in the amount recovered from such
49 parent corporation or holding company or person who
50 otherwise controlled it.

**ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSUR-
ANCE MINIMUM STANDARDS.**

§33-28-5b. Medicare supplement insurance.

1 (a) *Definitions:*

2 (1) "Applicant" means, in the case of an individual
3 medicare supplement policy or subscriber contract, the
4 person who seeks to contract for insurance benefits.

5 (2) "Medicare supplement policy" means an individual
6 policy of accident and sickness insurance or a subscriber
7 contract (of hospital and medical service associations)
8 which is advertised, marketed or designed primarily as
9 a supplement to reimbursements under medicare for the
10 hospital, medical or surgical expenses of persons eligible
11 for medicare. Such term does not include:

12 (A) A policy or contract of one or more employers or
13 labor organizations, or of the trustees of a fund
14 established by one or more employers or labor organ-
15 izations, or a combination thereof, for employees or
16 former employees, or combination thereof, or for
17 members or former members, or combination thereof,
18 of the labor organizations, or

19 (B) A policy or contract of any professional, trade or
20 occupational association for its members or former or
21 retired members, or combination thereof, if such
22 association is composed of individuals all of whom are
23 actively engaged in the same profession, trade or
24 occupation; has been maintained in good faith for
25 purposes other than obtaining insurance; and has been
26 in existence for at least two years prior to the date of
27 its initial offering of such policy or plan to its members.

28 (C) Individual policies or contracts issued pursuant to
29 a conversion privilege under a policy or contract of
30 group or individual insurance when such group or
31 individual policy or contract includes provisions which
32 are inconsistent with the requirements of this section.

33 (3) "Medicare" means the Health Insurance for the
34 Aged Act, Title XVIII of the Social Security Amend-
35 ments of 1965, as then constituted or later amended.

36 (b) *Standards for policy provisions:*

37 (1) The commissioner shall issue reasonable rules to
38 establish specific standards for policy provisions of

39 medicare supplement policies. Such standards shall be
40 in addition to and in accordance with the applicable
41 laws of this state and may cover, but shall not be limited
42 to:

- 43 (A) Terms of renewability;
- 44 (B) Initial and subsequent conditions of eligibility;
- 45 (C) Nonduplication of coverage;
- 46 (D) Probationary period;
- 47 (E) Benefit limitations, exceptions and reductions;
- 48 (F) Elimination period;
- 49 (G) Requirements for replacement;
- 50 (H) Recurrent conditions; and
- 51 (I) Definitions of terms.

52 (2) The commissioner may issue reasonable rules that
53 specify prohibited policy provisions not otherwise
54 specifically authorized by statute which, in the opinion
55 of the commissioner, are unjust, unfair or unfairly
56 discriminatory to any person insured or proposed for
57 coverage under a medicare supplement policy.

58 (3) Notwithstanding any other provisions of the law,
59 a medicare supplement policy may not deny a claim for
60 losses incurred more than six months from the effective
61 date of coverage for a preexisting condition. The policy
62 may not define a preexisting condition more restric-
63 tively than a condition for which medical advice was
64 given or treatment was recommended by or received
65 from a physician within six months before the effective
66 date of coverage.

67 (c) *Minimum standards for benefits.*

68 The commissioner shall issue reasonable rules to
69 establish minimum standards for benefits under med-
70 icare supplement policies.

71 (d) *Loss ratio standards.*

72 Medicare supplement policies shall be expected to
73 return to policyholders benefits which are reasonable in

74 relation to the premium charge. The commissioner shall
75 issue reasonable rules to establish minimum standards
76 for loss ratios and medicare supplement policies on the
77 basis of incurred claims experience and earned premi-
78 ums for the entire period for which rates are computed
79 to provide coverage and in accordance with accepted
80 actuarial principles and practices. For purposes of rules
81 issued pursuant to this paragraph, medicare supplement
82 policies issued as a result of solicitations of individuals
83 through the mail or mass media advertising, including
84 both print and broadcast advertising, shall be treated
85 as individual policies.

86 (e) *Disclosure standards:*

87 (1) In order to provide for full and fair disclosure in
88 the sale of accident and sickness policies, to persons
89 eligible for medicare, the commissioner may require by
90 rule that no policy of accident and sickness insurance
91 may be issued for delivery in this state and no certificate
92 may be delivered pursuant to such a policy unless an
93 outline of coverage is delivered to the applicant at the
94 time application is made.

95 (2) The commissioner shall prescribe the format and
96 content of the outline of coverage required by paragraph
97 one. For purposes of this paragraph, "format" means
98 style, arrangements and overall appearance, including
99 such items as size, color and prominence of type and the
100 arrangement of text and captions. Such outline of
101 coverage shall include:

102 (A) A description of the principal benefits and
103 coverage provided in the policy;

104 (B) A statement of the exceptions, reductions and
105 limitations contained in the policy;

106 (C) A statement of the renewal provisions including
107 any reservation by the insurer of the right to change
108 premiums;

109 (D) A statement that the outline of coverage is a
110 summary of the policy issued or applied for and that the
111 policy should be consulted to determine governing
112 contractual provisions.

113 (3) The commissioner may prescribe by rule a
114 standard form and the contents of an informational
115 brochure for persons eligible for medicare, which is
116 intended to improve the buyer's ability to select the most
117 appropriate coverage and improve the buyer's under-
118 standing of medicare. Except in the case of direct
119 response insurance policies, the commissioner may
120 require by rule that the information brochure be
121 provided to any prospective insureds eligible for
122 medicare concurrently with delivery of the outline of
123 coverage. With respect to direct response insurance
124 policies, the commissioner may require by rule that the
125 prescribed brochure be provided upon request to any
126 prospective insureds eligible for medicare, but in no
127 event later than the time of policy delivery.

128 (4) The commissioner may further promulgate reas-
129 onable rules to govern the full and fair disclosure of the
130 information in connection with the replacement of
131 accident and sickness policies, subscriber contracts or
132 certificates by persons eligible for medicare.

133 (f) *Notice of free examination.*

134 Medicare supplement policies or certificates, other
135 than those issued pursuant to direct response sollicita-
136 tion, shall have a notice prominently printed on the first
137 page of the policy or attached thereto stating in
138 substance that the applicant shall have the right to
139 return the policy of certificate within ten days from its
140 delivery and have the premium refunded if, after
141 examination of the policy or certificate, the applicant is
142 not satisfied for any reason. Medicare supplement
143 policies or certificates issued pursuant to a direct
144 response sollicitation to persons eligible for medicare
145 shall have a notice prominently printed on the first page
146 or attached thereto stating in substance that the
147 applicant shall have the right to return the policy or
148 certificate within thirty days of its delivery and to have
149 the premium refunded if, after examination, the
150 applicant is not satisfied for any reason.

151 (g) *Administrative procedures.*

152 Rules promulgated pursuant to this section shall be

153 subject to the provisions of chapter twenty-nine-a (West
154 Virginia Administrative Procedures Act).

155 (h) *Separability.*

156 If any provision of this section or the application
157 thereof to any person or circumstance is for any reason
158 held to be invalid, the remainder of the section and the
159 application of such provision to other persons or
160 circumstances shall not be affected thereby.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-6. Corporate organization.

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

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

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

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

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

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

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

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

26 (3) Such other aspects as the commissioner deems

27 advisable.

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

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

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

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

ARTICLE 32. RISK RETENTION ACT.

§33-32-1. Purpose and short title.

1 The purpose of this act is to regulate the formation
2 and operation of risk retention groups and purchasing
3 groups in this state formed pursuant to the provisions
4 of the federal liability risk retention act of 1986,
5 hereinafter referred to as "RRA 1986." This article may
6 be referred to as the "Risk Retention Act of West
7 Virginia."

§33-32-2. Definitions.

1 As used in this article, the term:

2 (a) "Commissioner" means the insurance commis-
3 sioner of the state of West Virginia or the commissioner,
4 director or superintendent of insurance in any other
5 state.

6 (b) "Completed operations liability" means liability

7 arising out of the installation, maintenance or repair of
8 any product at a site which is now owned or controlled
9 by:

10 (1) Any person who performs that work; or

11 (2) Any person who hires an independent contractor
12 to perform that work; but shall include liability for
13 activities which are completed or abandoned before the
14 date of the occurrence giving rise to the liability.

15 (c) "Domicile" for purposes of determining the state
16 in which a purchasing group is domiciled, means:

17 (1) For a corporation, the state in which the purchas-
18 ing group is incorporated; and

19 (2) For an unincorporated entity, the state of its
20 principal place of business.

21 (d) "Hazardous financial condition" means that, based
22 on its present or reasonably anticipated financial
23 condition, a risk retention group, although not yet
24 financially impaired or insolvent, is unlikely to be able:

25 (1) To meet obligations to policyholders with respect
26 to known claims and reasonably anticipated claims; or

27 (2) To pay other obligations in the normal course of
28 business.

29 (e) "Insurance" means primary insurance, excess
30 insurance, reinsurance, surplus lines insurance and any
31 other arrangement for shifting and distributing risk
32 which is determined to be insurance under the laws of
33 this state.

34 (f) "Liability" means legal liability for damages
35 (including costs of defense, legal costs and fees, and
36 other claims expenses) because of injuries to other
37 persons, damage to their property or other damage or
38 loss to such other persons resulting from or arising out
39 of:

40 (1) Any business (whether profit or nonprofit), trade,
41 product, services (including professional services),
42 premises or operations;

43 (2) Any activity of any state or local government, or
44 any agency or political subdivision thereof; or

45 (3) Does not include personal risk liability and an
46 employer's liability with respect to its employees other
47 than legal liability under the Federal Employers'
48 Liability Act.

49 (g) "Personal risk liability" means liability for
50 damages because of injury to any person, damage to
51 property, or other loss or damage resulting from any
52 personal, familial, or household responsibilities or
53 activities, rather than from responsibilities or activities
54 referred to in subsection (f);

55 (h) "Plan of operation" or a "feasibility study" means
56 an analysis which presents the expected activities and
57 results of a risk retention group including at a
58 minimum:

59 (1) Information sufficient to verify that its members
60 are engaged in businesses or activities similar or related
61 with respect to the liability to which such members are
62 exposed by virtue of any related, similar or common
63 business, trade, product services, premises or
64 operations;

65 (2) For each state in which the risk retention group
66 intends to operate, the coverages, deductibles, coverage
67 limits, rates and rating classification systems for each
68 line of insurance the group intends to offer;

69 (3) Historical and expected loss experience of the
70 proposed members and national experience of similar
71 exposures to the extent that this experience is reason-
72 ably available;

73 (4) Pro forma financial statements and projections;

74 (5) Appropriate opinions by a qualified, independent
75 casualty actuary, including a determination of min-
76 imum premium or participation levels required to
77 commence operations and to prevent a hazardous
78 financial condition;

79 (6) Identification of management, underwriting
80 procedures, managerial oversight methods, investment

81 policies and reinsurance agreements;

82 (7) Identification of each state in which the risk
83 retention group has obtained, or sought to obtain, a
84 charter and license, and a description of the risk
85 retention group's status in each such state; and

86 (8) Such other matters as may be prescribed by the
87 commissioner for liability insurance companies autho-
88 rized by the insurance laws of the state in which the risk
89 retention group is chartered.

90 (i) "Product liability" means liability for damages
91 because of any personal injury, death, emotional harm,
92 consequential economic damage, or property damage
93 (including damages resulting from the loss of use of
94 property) arising out of the manufacture, design,
95 importation, distribution, packaging, labeling, lease or
96 sale of a product, but does not include the liability of
97 any person for those damages if the product involved
98 was in the possession of such a person when the incident
99 giving rise to the claim occurred.

100 (j) "Purchasing group" means any group which:

101 (1) Has as one of its purposes the purchase of liability
102 insurance on a group basis;

103 (2) Purchases such insurance only for its group
104 members and only to cover their similar or related
105 liability exposure, as described in subsection (j)(3) of this
106 section;

107 (3) Is composed of members whose businesses or
108 activities are similar or related with respect to the
109 liability to which members are exposed by virtue of any
110 related, similar, or common business, trade, product,
111 services, premises or operations; and

112 (4) Is domiciled in any state.

113 (k) "Risk retention group" means any corporation or
114 other limited liability association formed under the laws
115 of any state:

116 (1) Whose primary activity consists of assuming and
117 spreading all, or any portion, of the liability exposure

118 of its group members;

119 (2) Which is organized for the primary purpose of
120 conducting the activity described under subdivision (1),
121 subsection (k) of this section;

122 (3) Which: (A) Is chartered and licensed as a liability
123 insurance company and authorized to engage in the
124 business of insurance under the laws of any state; or

125 (B) Before the first day of January, one thousand nine
126 hundred eighty-five, was chartered or licensed and
127 authorized to engage in the business of insurance under
128 the laws of Bermuda or the Cayman Islands, and, before
129 such date, had certified to the insurance commissioner
130 of at least one state that it satisfied the capitalization
131 requirements of such state, except that any such group
132 shall be considered to be a risk retention group only if
133 it has been engaged in business continuously since such
134 date and only for the purpose of continuing to provide
135 insurance to cover product liability or completed
136 operations liability as such terms were defined in the
137 product liability risk retention act of 1981 before the
138 date of the enactment of the risk retention act of 1986;

139 (4) Which does not exclude any person from member-
140 ship in the group solely to provide for members of such
141 a group a competitive advantage over such a person;

142 (5) Which: (A) Has as its owners only persons who
143 comprise the membership of the risk retention group
144 and who are provided insurance by such group; or

145 (B) Has as its sole owner an organization which has
146 as: (i) Its members only persons who comprise the
147 membership of the risk retention group; and

148 (ii) Its owners only persons who comprise the mem-
149 bership of the risk retention group and who are
150 provided insurance by such group;

151 (6) Whose members are engaged in businesses or
152 activities similar or related with respect to the liability
153 of which such members are exposed by virtue of any
154 related, similar, or common business trade, product,
155 services, premises or operations;

156 (7) Whose activities do not include the provision of
157 insurance other than:

158 (A) Liability insurance for assuming and spreading all
159 or any portion of the liability of its group members; and

160 (B) Reinsurance with respect to the liability of any
161 other risk retention group or any members of such other
162 group which is engaged in businesses or activities so
163 that such group or member meets the reinsurance
164 requirement set forth herein, from membership in the
165 risk retention group which provides such reinsurance;
166 and

167 (8) The name of which includes the phrase "Risk
168 Retention Group."

169 (l) "State" means any state of the United States or the
170 District of Columbia.

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

1 (a) A risk retention group shall, pursuant to the
2 provisions of article five of this chapter, be chartered
3 and licensed to write only liability insurance pursuant
4 to this article and, except as provided elsewhere in this
5 article, shall comply with all of the laws, rules and
6 requirements applicable to insurers chartered and
7 licensed in this state and with section four of this article,
8 to the extent such requirements are not a limitation on
9 laws, rules or requirements of this state.

10 (b) Notwithstanding any other provision of this
11 chapter to the contrary, all risk retention groups
12 chartered in this state shall file with the commissioner
13 and the national association of insurance commissioners,
14 an annual statement on a form prescribed by the
15 national association of insurance commissioners and in
16 diskette form, if required by the commissioner and
17 completed in accordance with the national association of
18 insurance commissioners' instructions and the national

19 association of insurance commissioners accounting
20 practices and procedures manual.

21 (c) Before it may offer insurance in any state, each
22 risk retention group shall also submit for approval by
23 the insurance commissioner of this state a plan of
24 operation or feasibility study. The risk retention group
25 shall submit an appropriate revision of such plan or
26 study, in the event of any subsequent material change
27 in any item of the plan of operation or feasibility study,
28 within ten days of any such change. The risk retention
29 group shall not offer any additional kinds of liability
30 insurance, in this state or in any other state, until a
31 revision of the plan or study is approved by the
32 commissioner.

33 (d) At the time of filing its application for a charter,
34 the risk retention group shall provide to the commis-
35 sioner in summary form the following information: The
36 identity of the initial members of the group, the identity
37 of those individuals who organized the group or who will
38 provide administrative services or otherwise influence
39 or control the activities of the group, the amount and
40 nature of initial capitalization, the coverages to be
41 afforded, and the states in which the group intends to
42 operate. Upon receipt of this information, the commis-
43 sioner shall forward the information to the national
44 association of insurance commissioners. Providing
45 notification to the national association of insurance
46 commissioners is in addition to and shall not be
47 sufficient to satisfy the requirements of section four or
48 any other sections of this article.

49 (e) Risk retention groups are subject to the provisions
50 of article thirty-three, article thirty-four and article
51 thirty-seven of this chapter.

**§33-32-4. Risk retention groups not chartered in this
state.**

1 (a) Risk retention groups chartered in states other
2 than this state and seeking to do business as a risk
3 retention group in this state must observe and abide by
4 the laws of this state.

5 (b) Before offering insurance in this state, a risk
6 retention group shall submit the following information
7 to the commissioner on a form prescribed by the
8 national association of insurance commissioners:

9 (1) A statement identifying the state or states in which
10 the risk retention group is chartered and licensed as a
11 liability insurance company, date of chartering, its
12 principal place of business, and such other information
13 including information on its membership, as the
14 commissioner of this state may require to verify that the
15 risk retention group is qualified under this article;

16 (2) A copy of its plan of operations or a feasibility
17 study and revisions of such plan or study submitted to
18 its state of domicile: *Provided*, That the provision
19 relating to the submission of a plan of operation or a
20 feasibility study shall not apply with respect to any line
21 or classification of liability insurance which (i) was
22 defined in the federal product liability risk retention act
23 of 1981 before the twenty-seventh day of October, one
24 thousand nine hundred eighty-six, and (ii) was offered
25 before such date by any risk retention group which had
26 been chartered and operating for not less than three
27 years before such date; and

28 (3) A statement of registration which designates the
29 commissioner as its agent for the purpose of receiving
30 service of legal documents or process.

31 (4) A risk retention group that has been chartered and
32 operating in any state and has previously filed an annual
33 financial statement as required by this section with its
34 state of domicile, must submit a copy of the most recent
35 annual statement with the registration form required by
36 this subsection.

37 (c) The risk retention group shall submit a copy of any
38 revision to its plan of operation or feasibility study
39 required by section three of this article at the same time
40 that the revision is submitted to the commissioner of its
41 chartering state.

42 (d) A risk retention group shall not commence offering
43 insurance in this state prior to receiving a certificate of

44 registration from the commissioner.

45 (e) Any risk retention group doing business in this
46 state shall submit to the commissioner:

47 (1) Annually a copy of the group's financial statement
48 submitted to its state of domicile, which shall be
49 certified by an independent public accountant and
50 contain a statement of opinion on loss and loss adjust-
51 ment expense reserves made by a member of the
52 American academy of actuaries or a qualified loss
53 reserve specialist (under criteria established by the
54 national association of insurance commissioners);

55 (2) A copy of each examination of the risk retention
56 group as certified by the commissioner or public official
57 conducting the examination;

58 (3) Upon request by the commissioner, a copy of any
59 audit performed with respect to the risk retention
60 group; and

61 (4) Such information as may be required to verify its
62 continuing qualification as a risk retention group under
63 this article.

64 (f) The commissioner shall promulgate rules pursuant
65 to the provisions of chapter twenty-nine-a of this code
66 regarding all fees to be submitted with the filings
67 required by this section.

§33-32-5. Tax on premiums collected.

1 (a) Each risk retention group shall be subject to the
2 same interests, fines and penalties for nonpayment as
3 that generally applicable to insurers under article three,
4 chapter thirty-three of this code: *Provided*, That the
5 premium tax or other taxes on each risk retention group
6 shall be in accordance with the provisions of this section.
7 Each risk retention group insurance company shall pay
8 to the commissioner, in the month of February of each
9 year, a tax at the rate of three quarters of one percent
10 on the gross amount of all premiums collected or
11 contracted for on policies or contracts of insurance
12 covering property or risks in this state and on risk and
13 property situated elsewhere upon which no premium tax

14 is otherwise paid during the year ending December 31
15 next preceding, after deducting from the gross amount
16 of premiums subject to the tax amount received as
17 reinsurance premiums on business in the state and the
18 amount paid to policyholders as return premiums which
19 shall include dividends on unabsorbed premiums or
20 premium deposits returned or credited to policyholders:
21 *Provided, however,* That the three quarters of one
22 percent premium tax provided for herein shall be
23 waived for a period of five years and thereafter be
24 applicable at a reduced rate of one half of one percent
25 of the gross amount of premiums provided for herein-
26 above, if the said risk retention groups make a min-
27 imum qualified investment of two million dollars in the
28 state of West Virginia during the five year waiver
29 period, as a direct result thereof and the tax commis-
30 sioner so certifies.

31 (b) The tax provided for in this section shall constitute
32 all taxes collectible under the laws of this state from any
33 risk retention group, and no other premium tax or other
34 taxes shall be levied or collected from any risk retention
35 group by the state or any county, city or municipality
36 within this state, except ad valorem taxes.

37 (c) To the extent that a risk retention group utilizes
38 insurance agents, each such agent shall keep a complete
39 and separate record of all policies procured from each
40 risk retention group, which record shall be open to
41 examination by the commissioner, as provided in section
42 nine, article two of this chapter. These records shall, for
43 each policy and each kind of insurance provided
44 thereunder, include the following:

- 45 (1) The limit of liability;
- 46 (2) The time period covered;
- 47 (3) The effective date;
- 48 (4) The name of the risk retention group which issued
49 the policy;
- 50 (5) The gross premium charged; and
- 51 (6) The amount of return premiums, if any.

§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. Any such examination shall be conducted
13 in accordance with the national association of insurance
14 commissioners examiners handbook.

§33-32-9. Notice to purchasers.

1 Every application form for insurance from a risk
2 retention group and any policy issued by a risk retention
3 group shall contain in ten-point type on the front page
4 and the declaration page, the following notice:

5 NOTICE

6 This policy is issued by your risk retention group.
7 Your risk retention group may not be subject to all of
8 the insurance laws and rules of your state. State
9 insurance insolvency guaranty funds are not available
10 for your risk retention group.

§33-32-14. Compulsory associations.

1 (a) A risk retention group shall not be permitted to
2 join or contribute financially to any insurance insolvency
3 guaranty fund, or similar mechanism, in this state, nor
4 shall any risk retention group, or its insureds, or
5 claimants against its insureds, receive any benefit from
6 any such fund for claims arising out of the operations
7 of such risk retention group.

8 (b) When a purchasing group obtains insurance
9 covering its members' risks from an insurer not
10 authorized in this state or a risk retention group, such
11 risks, wherever resident or located, shall not be covered

12 by any insurance guaranty fund or similar mechanism
13 in this state.

14 (c) When a purchasing group obtains insurance
15 covering its members' risks from an authorized insurer,
16 only risks resident or located in this state shall be
17 covered by the state guaranty fund subject to article
18 twenty-six of this chapter.

**§33-32-16. Purchasing groups; exemption from certain
laws relating to the group purchase of
insurance.**

1 (a) A purchasing group and its insurer or insurers
2 shall be subject to all applicable laws of this state,
3 except that a purchasing group and its insurer or
4 insurers shall be exempt, in regard to liability insurance
5 for the purchasing group, from any law that would:

6 (1) Prohibit the establishment of a purchasing group;

7 (2) Make it unlawful for an insurer to provide or offer
8 to provide insurance on a basis providing, to a purchas-
9 ing group or its members, advantages based on their
10 loss and expense experience not afforded to other
11 persons with respect to rates, policy forms, coverages or
12 other matters;

13 (3) Prohibit a purchasing group or its members from
14 purchasing insurance on a group basis described in
15 subsection (b) of this section;

16 (4) Prohibit a purchasing group from obtaining
17 insurance on a group basis because the group has not
18 been in existence for a minimum period of time or
19 because any member has not belonged to the group for
20 a minimum period of time;

21 (5) Require that a purchasing group have a minimum
22 number of members, common ownership or affiliation,
23 or a certain legal form;

24 (6) Require that a certain percentage of a purchasing
25 group obtain insurance on a group basis;

26 (7) Otherwise discriminate against a purchasing
27 group or any of its members; or

28 (8) Require that any insurance policy issued to a
29 purchasing group or any of its members be counter-
30 signed by an insurance agent or broker residing in this
31 state.

**§33-32-17. Notice and registration requirements of
purchasing groups.**

1 (a) A purchasing group which intends to do business
2 in this state shall, prior to doing business, furnish notice
3 to the commissioner which shall, on forms prescribed by
4 the national association of insurance commissioners:

5 (1) Identify the state in which the group is domiciled;

6 (2) Identify all other states in which the group intends
7 to do business;

8 (3) Specify the lines and classifications of liability
9 insurance which the purchasing group intends to
10 purchase;

11 (4) Identify the insurance company or companies from
12 which the group intends to purchase its insurance and
13 the domicile of such company;

14 (5) Specify the method by which, and the person or
15 persons, if any, through whom insurance will be offered
16 to its members whose risks are resident or located in
17 this state;

18 (6) Identify the principal place of business of the
19 groups; and

20 (7) Provide such other information as may be required
21 by the commissioner to verify that the purchasing group
22 is qualified under this article.

23 (b) A purchasing group shall, within ten days, notify
24 the commissioner of any changes in any of the items set
25 forth in this section.

26 (c) The purchasing group shall register with and
27 designate the commissioner (or other appropriate
28 authority) as its agent solely for the purpose of receiving
29 service of legal documents or process: *Provided*, That
30 such requirements shall not apply in the case of a
31 purchasing group which:

32 (1) Was domiciled before the first day of April, one
33 thousand nine hundred eighty-six in any state of the
34 United States; and

35 (2) Is domiciled on and after the second day of
36 October, one thousand nine hundred eighty-six, in any
37 state of the United States and which:

38 (A) Before the twenty-seventh day of October, one
39 thousand nine hundred eighty-six, purchased insurance
40 from an insurance carrier licensed in any state; and

41 (B) Since the twenty-seventh day of October, one
42 thousand nine hundred eighty-six, purchased its insu-
43 rance from an insurance carrier licensed in any state;

44 (3) Which was a purchasing group under the require-
45 ments of the product liability risk retention act of 1981,
46 before the twenty-seventh day of October, one thousand
47 nine hundred eighty-six; and

48 (4) Which does not purchase insurance that was not
49 authorized for purposes of an exemption under that act,
50 as in effect before the twenty-seventh day of October,
51 one thousand nine hundred eighty-six.

52 (d) Each purchasing group that is required to give
53 notice pursuant to subsection (a) of this section shall also
54 furnish such information as may be required by the
55 commissioner to:

56 (1) Verify that the entity qualifies as a purchasing
57 group;

58 (2) Determine where the purchasing group is located;
59 and

60 (3) Determine appropriate tax treatment.

61 (e) The insurance commissioner shall promulgate
62 rules pursuant to the provisions of chapter twenty-nine-
63 a of this code regarding the amount of all registration
64 or filing fees required by this section.

§33-32-18. Restrictions on insurance purchased by purchasing groups.

1 (a) A purchasing group may not purchase insurance

2 from a risk retention group that is not chartered in a
3 state or from an insurer not admitted in the state in
4 which the purchasing group is located, unless the
5 purchase is effected through a licensed agent or broker
6 acting pursuant to the surplus lines laws and regula-
7 tions of such state.

8 (b) A purchasing group which obtains liability
9 insurance from an insurer not admitted in this state or
10 a risk retention group shall inform each of the members
11 of the group which has a risk resident or located in this
12 state that the risk is not protected by an insurance
13 insolvency guaranty fund in this state, and that the risk
14 retention group or insurer may not be subject to all
15 insurance laws and regulations of this state. To give
16 notice as required by this section, the purchasing group
17 shall ensure that each group certificate or evidence of
18 insurance has printed or stamped in contrasting color
19 on the front page the following statement:

20 THIS INSURER IS NOT LICENSED TO DO BUSI-
21 NESS IN WEST VIRGINIA, AND IS NOT SUBJECT
22 TO THE WEST VIRGINIA INSURANCE GUAR-
23 ANTY ACT OR TO ALL OF THE PROTECTIONS OF
24 THE INSURANCE LAWS AND RULES OF THIS
25 STATE.

26 (c) A purchasing group shall not purchase insurance
27 providing for a deductible or self-insured retention
28 applicable to the group as a whole: *Provided*, That
29 coverage may provide for a deductible or self-insured
30 retention applicable to individual members.

31 (d) Purchases of insurance by purchasing groups are
32 subject to the same standards regarding aggregate
33 limits which are applicable to all purchases of group
34 insurance.

**§33-32-19. Administrative and procedural authority
regarding risk retention groups and pur-
chasing groups.**

1 The commissioner is authorized to make use of any of
2 the powers established under this chapter of this code
3 to enforce the laws of this state so long as those powers

4 are not specifically preempted by the national product
5 liability risk retention act of 1981, as amended by the
6 risk retention amendments of 1986. This includes, but
7 is not limited to, the commissioner's administrative
8 authority to investigate, issue subpoenas, conduct
9 depositions and hearings, issue orders, and impose
10 penalties and seek injunctive relief. With regard to any
11 investigation, administrative proceedings, or litigation,
12 the commissioner can rely on the law and rules of the
13 state. The injunctive authority of the commissioner in
14 regard to risk retention groups is restricted by the
15 requirement that any injunction be issued by a court of
16 competent jurisdiction.

§33-32-21. Duty on agents or brokers to obtain license.

1 (a) A person, or a person working for a firm,
2 association or corporation, shall not act or aid in any
3 manner in soliciting, negotiating or procuring liability
4 insurance in this state from a risk retention group
5 unless such person, or person working for a firm,
6 association or corporation, is licensed as an insurance
7 agent in accordance with article twelve of this chapter.

8 (b) A person, or a person working for a firm,
9 association or corporation, shall not act or aid in any
10 manner in soliciting, negotiating or procuring liability
11 insurance in this state for a purchasing group from an
12 authorized insurer or a risk retention group chartered
13 in a state unless such person, or person working for a
14 firm, association or corporation, is licensed as an
15 insurance agent in accordance with article twelve of this
16 chapter.

17 (c) A person, or a person working for a firm, associ-
18 ation or corporation, shall not act or aid in any manner
19 in soliciting, negotiating or procuring liability insurance
20 coverage in this state for any member of a purchasing
21 group under a purchasing group's policy unless such
22 person, or person working for a firm, association or
23 corporation, is licensed as an insurance agent in
24 accordance with article twelve of this chapter.

25 (d) A person, or a person working for a firm,
26 association or corporation, shall not act or aid in any

27 manner in soliciting, negotiating or procuring liability
28 insurance from an insurer not authorized to do business
29 in this state on behalf of a purchasing group located in
30 this state unless such person, or person working for a
31 firm, association or corporation, is licensed as an excess
32 line broker in accordance with section thirteen, article
33 twelve of this chapter.

34 (e) For purposes of acting as an agent for a risk
35 retention group or purchasing group pursuant to the
36 provisions of this section, the requirement of residence
37 in this state shall not apply.

38 (f) Every person, or person working for a firm,
39 association or corporation, licensed pursuant to the
40 provisions of this chapter, on business placed with risk
41 retention groups or written through a purchasing group,
42 shall inform each prospective insured of the provisions
43 of the notice required by section nine of this article in
44 the case of a risk retention group and in the case of a
45 purchasing group, the notice required by subsection (b),
46 section eighteen of this article.

§33-32-24. Operation prior to enactment.

1 (a) In addition to complying with the requirements of
2 this article, any risk retention group operating in this
3 state prior to enactment of the amendments made to this
4 article in the regular session of the Legislature during
5 the year one thousand nine hundred ninety-two shall
6 comply with the provisions of subsection (a), section four
7 of this article before the thirty-first day of December,
8 one thousand nine hundred ninety-two.

9 (b) Any purchasing group which was doing business
10 in this state prior to enactment of the amendments made
11 to this article in the regular session of the Legislature
12 during the year one thousand nine hundred ninety-two
13 shall furnish notice to the commissioner pursuant to the
14 provisions of section seventeen of this article before the
15 thirty-first day of December, one thousand nine hundred
16 ninety-two.

ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED PROPERTY/CASUALTY INSURER ACT.

§33-36-1. Short title.

1 This article may be cited as the Business Transacted
2 with Producer-Controlled Property/Casualty Insurer
3 Act.

§33-36-2. Definitions.

1 As used in this article:

2 (a) "Producer" means an insurance broker or brokers
3 or any other person, firm, association or corporation,
4 when, for any compensation, commission or other thing
5 of value, such person, firm, association or corporation
6 acts or aids in any manner in soliciting, negotiating or
7 procuring the making of any insurance contract on
8 behalf of an insured other than himself, herself or itself:
9 *Provided*, That the term "producer" is not intended to
10 expand upon or provide for activities beyond those
11 permitted by article twelve of this chapter.

12 (b) "Reinsurance intermediary" means any person,
13 firm, association or corporation that acts as a producer
14 in soliciting, negotiating or procuring the making of any
15 reinsurance contract or binder on behalf of a ceding
16 insurer or acts as a producer in accepting any reinsu-
17 rance contract or binder on behalf of an assuming
18 insurer.

19 (c) "Control" or "controlled" means the possession,
20 direct or indirect, of the power to direct or cause the
21 direction of the management and policies of a person,
22 whether through the ownership of voting securities, by
23 contract other than a contract for goods or nonmanage-
24 ment services, or otherwise. Control shall be presumed
25 to exist if any person, directly or indirectly, owns,
26 controls, holds with the powers to vote, or holds proxies
27 representing a majority of the outstanding voting
28 securities of any other person. A person may not be
29 deemed to control another person solely by reason of
30 being an officer or director of such other person.

31 (d) "Licensed property/casualty insurer" or "insurer"
32 means any person, firm, association or corporation duly
33 licensed to transact a property/casualty insurance
34 business in this state and which issues policies covered

35 by the provisions of the West Virginia Insurance
36 Guaranty Association Act contained in article twenty-
37 six of this chapter: *Provided*, That entities which are not
38 licensed property/casualty insurers for the purposes of
39 this article include, but are not limited to, the following:

40 (1) All nonadmitted insurers;

41 (2) All risk retention groups as defined in the
42 Superfund Amendments Reauthorization Act of 1986,
43 Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk
44 Retention Act, 15 U.S.C. Section 3901 et seq. (1982 &
45 Supp. 1986) and article thirty-two of this chapter;

46 (3) All residual market pools and joint underwriting
47 authorities or associations; and

48 (4) All captive insurers as defined in article thirty-one
49 of this chapter.

50 (e) "Independent casualty actuary" means a casualty
51 actuary who is a member of the American academy of
52 actuaries and who is not affiliated with, nor an
53 employee, principal, nor the direct or indirect owner of,
54 or in any way controlled by the insurer or producer.

55 (f) "Violation" means, for purposes of this article, a
56 finding by the commissioner that:

57 (1) The controlling producer did not materially
58 comply with section three of this article; or

59 (2) The controlled insurer, with respect to business
60 placed by the controlling producer, engaged in a pattern
61 of charging premiums that were lower than those being
62 charged by such insurer or other insurers for similar
63 risks written during the same period and placed by
64 noncontrolling producers. When determining whether
65 premiums were lower than those prevailing in the
66 market, the commissioner shall take into consideration
67 applicable industry or actuarial standards at the time
68 the business was written; or

69 (3) The controlling producer failed to maintain
70 records sufficient to:

71 (A) Demonstrate that such producer's dealings with

72 its controlled insurer were fair and equitable and in
73 compliance with article twenty-seven of this chapter;
74 and

75 (B) Accurately disclose the nature and details of its
76 transactions with the controlled insurer, including such
77 information as is necessary to support the charges or
78 fees to the respective parties; or

79 (4) The controlled insurer, with respect to business
80 placed by the controlling producer, either failed to
81 establish or deviated from its underwriting procedures;
82 or

83 (5) The controlled insurer's capitalization at the time
84 the business was placed by the controlling producer and
85 with respect to such business was not in compliance with
86 criteria established by the commissioner or this chapter;
87 or

88 (6) The controlling producer or the controlled insurer
89 failed to substantially comply with article twenty-seven
90 of this chapter and any rules relative thereto.

§33-36-3. Limitation on business placed with controlled insurer.

1 (a) A producer that has control of a licensed prop-
2 erty/casualty insurer shall not directly or indirectly
3 place business with such insurer in any transaction in
4 which such producer, at the time the business is placed,
5 is acting as such on behalf of the insured for any
6 compensation, commission or other thing of value,
7 unless:

8 (1) There is a written contract between the controlling
9 producer and the insurer, which contract has been
10 approved by the board of directors of the insurer;

11 (2) Such producer, prior to the effective date of the
12 policy, delivers written notice to the prospective insured
13 disclosing the relationship between such producer and
14 the controlled insurer. Such disclosure, signed by the
15 insured, shall be retained in the underwriting file until
16 the filing of the report on examination covering the
17 period in which the coverage is in effect: *Provided*, That

18 if the business is placed through a subproducer who is
19 not a controlling producer, the controlling producer
20 shall retain in his or her records a signed commitment
21 from the subproducer that the subproducer is aware of
22 the relationship between the insurer and the producer
23 and that the subproducer has notified or will notify the
24 insured;

25 (3) All funds collected for the account of the insurer
26 by the controlling producer shall be paid, net of
27 commissions, cancellations and other adjustments, to the
28 insurer no less often than quarterly;

29 (4) In addition to any other required loss reserve
30 certification, the controlled insurer shall annually, on
31 the first day of April of each year, file with the
32 commissioner an opinion of an independent casualty
33 actuary, or such other independent loss reserve special-
34 ist acceptable to the commissioner, reporting loss ratios
35 for each line of business written and attesting to the
36 adequacy of loss reserves established for losses incurred
37 and outstanding as of year-end, including incurred but
38 not reported on business placed by such producer;

39 (5) The controlled insurer shall report annually to the
40 commissioner the amount of commissions paid to such
41 producer, the percentage such amount represents of the
42 net premiums written and comparable amounts and
43 percentage paid to noncontrolling producers for place-
44 ments of the same kinds of insurance; and

45 (6) Every controlled insurer shall have an audit
46 committee of its board of directors composed of inde-
47 pendent directors. Prior to approval of the annual
48 financial statement, the audit committee shall meet with
49 management, the insurer's independent certified public
50 accountants, and an independent casualty actuary or
51 such other independent loss reserve specialist acceptable
52 to the commissioner to review the adequacy of the
53 insurer's loss reserves.

54 (b) Any reinsurance intermediary that has control of
55 an assuming insurer shall not directly or indirectly
56 place business with such insurer in any transaction in
57 which such reinsurance intermediary is acting as a

58 broker on behalf of the ceding insurer. Any reinsurance
59 intermediary that has control of a ceding insurer shall
60 not directly or indirectly accept business from such
61 insurer in any transaction in which such reinsurance
62 intermediary is acting as a producer on behalf of the
63 assuming insurer. The prohibitions in this subsection
64 shall not apply to a reinsurance intermediary which
65 makes a full and complete written disclosure to the
66 parties of its relationship with the assuming or ceding
67 insurer prior to completion of the transaction.

**§33-36-4. Liability of controlling producer in the event of
insolvency of controlled insurer.**

1 (a) If the commissioner has reason to believe that a
2 controlling producer has committed or is committing an
3 act which could be determined to be a violation, as
4 defined in subsection (f), section two of this article, he
5 or she shall serve upon the controlling producer in the
6 manner provided by section twelve, article two of this
7 chapter a statement of the charges and notice of a
8 hearing to be conducted in accordance with section
9 thirteen, article two of this chapter.

10 (b) At such hearing, the commissioner must establish
11 that the controlling producer engaged in a violation, as
12 defined in subsection (f), section two of this article. The
13 controlling producer shall have an opportunity to be
14 heard and to present evidence rebutting the charges and
15 to establish that the insolvency of the controlled insurer
16 arose out of events not attributable to the violation. The
17 decision, determination or order of the commissioner
18 shall be subject to judicial review pursuant to section
19 fourteen, article two of this chapter.

20 (c) Upon the finding, pursuant to the hearing des-
21 cribed in subdivision (b) of this subsection, that the
22 controlling producer committed a violation, as defined
23 in subsection (f), section two of this article, and the
24 controlling producer failed to establish that such
25 violation did not substantially contribute to the insol-
26 vency, the controlling producer shall reimburse the
27 West Virginia insurance guaranty association for all
28 payments made for losses, loss adjustment and adminis-

29 trative expenses on the business placed by such pro-
30 ducer in excess of gross earned premiums and invest-
31 ment income earned on premiums and loss reserves for
32 such business.

33 (d) Nothing contained in this section shall affect the
34 right of the commissioner to impose any other penalties
35 provided for in this chapter.

36 (e) Nothing contained in this article is intended to or
37 shall in any manner alter or affect the rights of
38 policyholders, claimants, creditors or other third
39 parties.

ARTICLE 37. MANAGING GENERAL AGENTS.

§33-37-1. Definitions.

1 For the purposes of this article:

2 (a) "Actuary" means a person who is a member in
3 good standing of the American academy of actuaries.

4 (b) "Insurer" means any person, firm, association or
5 corporation engaged as indemnitor, surety or contractor
6 in the business of entering into contracts of insurance
7 or of annuities as limited to:

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

12 (2) This includes, but is not limited to, any domestic
13 insurer as defined in section six, article one of this
14 chapter and any foreign insurer as defined in section
15 seven, article one of this chapter, including any stock
16 insurer, mutual insurer, reciprocal insurer, farmers'
17 mutual fire insurance company, fraternal benefit
18 society, hospital service corporation, medical service
19 corporation, dental service corporation, health service
20 corporation, health care corporation, health mainte-
21 nance organization, captive insurance company or risk
22 retention group.

23 (c) "Managing general agent" means any person, firm,
24 association or corporation who negotiates and binds

25 ceding reinsurance contracts on behalf of an insurer or
26 manages all or part of the insurance business of an
27 insurer, including the management of a separate
28 division, department or underwriting office, and acts as
29 an agent for such insurer whether known as a managing
30 general agent, manager or other similar term, who, with
31 or without the authority, either separately or together
32 with affiliates, produces, directly or indirectly, and
33 underwrites an amount of gross direct written premium
34 equal to or greater than five percent of the policyholder
35 surplus as reported in the last annual statement of the
36 insurer in any one quarter or year, together with one
37 or more of the following:

38 (1) Adjusts or pays claims in excess of an amount
39 determined by the commissioner; or

40 (2) Negotiates reinsurance on behalf of the insurer.
41 Notwithstanding the preceding provision, the following
42 persons are not to be considered as managing general
43 agents for the purposes of this article:

44 (1) An employee of the insurer;

45 (2) A United States manager of the United States
46 branch of an alien insurer;

47 (3) An underwriting manager that, pursuant to
48 contract, manages all or part of the insurance operations
49 of the insurer, is under common control with the
50 insurer, is subject to the holding company regulatory
51 act, and whose compensation is not based on the volume
52 of premiums written without regard to the profitability
53 of the business written;

54 (4) The attorney-in-fact authorized by and acting for
55 the subscribers of a reciprocal insurer or inter-insu-
56 rance exchange under powers of attorney.

57 (d) "Underwrite" means to accept or reject risk on
58 behalf of the insurer, as authorized by the insurer.

§33-37-2. Licensure.

1 (a) Any person, or a person working for a firm,
2 association or corporation, shall not act in the capacity
3 of a managing general agent with respect to risks

4 located in this state for an insurer licensed in this state
5 unless such person is licensed and appointed as an agent
6 of the insurer in this state.

7 (b) Any person, or a person working for a firm,
8 association or corporation, shall not act in the capacity
9 of a managing general agent representing an insurer
10 domiciled in this state with respect to risks located
11 outside this state unless such person is licensed and
12 appointed as an agent of the insurer in this state. The
13 license held by such person may be a nonresident
14 license.

15 (c) The commissioner may require a bond in an
16 amount acceptable to him or her for the protection of
17 the insurer.

18 (d) The commissioner may require the managing
19 general agent to maintain an errors and omissions policy
20 of liability insurance.

§33-37-3. Required contract provisions.

1 Any person, or a person working for a firm, associ-
2 ation or corporation, acting in the capacity of a
3 managing general agent shall not place business with
4 an insurer unless there is in force a written contract
5 between the parties which sets forth the responsibilities
6 of each party and whereby both parties share respon-
7 sibility for a particular function, which specifies the
8 division of such responsibilities, and which contains the
9 following minimum provisions:

10 (a) The insurer may terminate the contract for cause
11 upon written notice to the managing general agent. The
12 insurer may suspend the underwriting authority of the
13 managing general agent during the pendency of any
14 dispute regarding the cause for termination.

15 (b) The managing general agent will render accounts
16 to the insurer detailing all transactions and remit all
17 funds due under the contract to the insurer on not less
18 than a monthly basis.

19 (c) All funds collected for the account of an insurer
20 will be held by the managing general agent in a

21 fiduciary capacity in a bank which is a member of the
22 federal reserve system. This account shall be used for
23 all payments on behalf of the insurer. The managing
24 general agent may retain no more than three months'
25 estimated claims payments and allocated loss adjust-
26 ment expenses.

27 (d) The managing general agent shall maintain
28 separate records of business that he or she writes. The
29 insurer shall have access to and the right to copy all
30 accounts and records related to its business, in a form
31 usable by it. The commissioner shall have access to all
32 books, bank accounts and records of the managing
33 general agent in a form usable to him or her.

34 (e) The contract may not be assigned, in whole or in
35 part, by the managing general agent.

36 (f) The contract shall contain appropriate underwrit-
37 ing guidelines including:

38 (1) The maximum annual premium volume;

39 (2) The basis of the rates to be charged;

40 (3) The types of risks that may be written;

41 (4) Maximum limits of liability;

42 (5) Applicable exclusions;

43 (6) Territorial limitations;

44 (7) Policy cancellation provisions; and

45 (8) The maximum policy period. The insurer shall
46 have the right to cancel or nonrenew any policy of
47 insurance subject to applicable laws and rules concern-
48 ing cancellation and nonrenewal of insurance policies.

49 (g) If the contract permits the managing general
50 agent to settle claims on behalf of the insurer:

51 (1) All claims must be reported to the company in a
52 timely manner.

53 (2) A copy of the claim file will be sent to the insurer
54 at its request or as soon as it becomes known that the
55 claim:

56 (A) Has the potential to exceed an amount determined
57 by the commissioner or exceeds the limit set by the
58 company, whichever is less;

59 (B) Involves a coverage dispute;

60 (C) May exceed the managing general agent's claims
61 settlement authority;

62 (D) Is open for more than six months; or

63 (E) Is closed by payment of an amount set by the
64 commissioner or an amount set by the company,
65 whichever is less.

66 (3) All claim files will be the joint property of the
67 insurer and managing general agent. However, upon an
68 order of liquidation of the insurer, such files shall
69 become the sole property of the insurer or its estate. The
70 managing general agent shall have reasonable access to
71 and the right to copy the files on a timely basis.

72 (4) Any settlement authority granted to the managing
73 general agent may be terminated for cause upon the
74 insurer's written notice to the managing general agent
75 or upon termination of the contract. The insurer may
76 suspend the settlement authority during the pendency
77 of any dispute regarding the cause for termination.

78 (h) If electronic claims files are in existence, the
79 contract must address the timely transmission of the
80 data contained in such files.

81 (i) If the contract provides for a sharing of interim
82 profits by the managing general agent, and the manag-
83 ing general agent has the authority to determine the
84 amount of the interim profits by establishing loss
85 reserves or controlling claim payments, or in any other
86 manner, interim profits shall not be paid to the
87 managing general agent until one year after they are
88 earned for property insurance business and five years
89 after they are earned on casualty business: *Provided,*
90 That no such profits may be paid until they have been
91 verified pursuant to section four of this article.

92 (j) The managing general agent shall not:

93 (1) Bind reinsurance or retrocessions on behalf of the
94 insurer, except that the managing general agent may
95 bind facultative reinsurance contracts pursuant to
96 obligatory facultative agreements if the contract with
97 the insurer contains reinsurance underwriting guide-
98 lines including, for both reinsurance assumed and
99 ceded, a list of reinsurers with which such automatic
100 agreements are in effect, the coverages and amounts or
101 percentages that may be reinsured and commission
102 schedules;

103 (2) Commit the insurer to participate in insurance or
104 reinsurance syndicates;

105 (3) Appoint any agent without assuring that the agent
106 is lawfully licensed to transact the type of insurance for
107 which he or she is appointed;

108 (4) Without prior approval of the insurer, pay or
109 commit the insurer to pay a claim over a specified
110 amount, net of reinsurance, which shall not exceed one
111 percent of the insurer's policyholders' surplus as of the
112 thirty-first day of December off the last completed
113 calendar year;

114 (5) Collect any payment from a reinsurer or commit
115 the insurer to any claim settlement with a reinsurer,
116 without prior approval of the insurer. If prior approval
117 is given, a report must be promptly forwarded to the
118 insurer;

119 (6) Permit its subproducer to serve on the insurer's
120 board of directors;

121 (7) Jointly employ an individual who is employed by
122 the insurer; or

123 (8) Appoint a sub-managing general agent.

§33-37-4. Duties of insurers.

1 (a) The insurer shall have on file an independent
2 financial examination, in a form acceptable to the
3 commissioner, of each managing general agent with
4 which it has done business.

5 (b) If a managing general agent establishes loss

6 reserves, the insurer shall annually obtain the opinion
7 of an actuary in a form consistent with the requirements
8 for actuarial certifications as imposed upon the insurer
9 by statute or rule of the commissioner, attesting to the
10 adequacy of loss reserves established for losses incurred
11 and outstanding on business produced by the managing
12 general agent. This required actuary's opinion is in
13 addition to any other required loss reserve certification.

14 (c) The insurer shall at least semiannually conduct an
15 on-site review of the underwriting and claims process-
16 ing operations of the managing general agent.

17 (d) Binding authority for all reinsurance contracts or
18 participation in insurance or reinsurance syndicates
19 shall rest with an officer of the insurer, who shall not
20 be affiliated with the managing general agent.

21 (e) Within thirty days of entering into or terminating
22 a contract with a managing general agent, the insurer
23 shall provide written notification of such appointment or
24 termination to the commissioner. A notice of appoint-
25 ment of a managing general agent shall include a
26 statement of duties which such agent is expected to
27 perform on behalf of the insurer, the lines of insurance
28 for which such agent is to be authorized to act, and any
29 other information the commissioner may request.

30 (f) An insurer shall review its books and records each
31 quarter to determine if any producer as defined by
32 subsection (c), section one of this article has become, by
33 operation of that subsection, a managing general agent
34 as defined therein. If the insurer determines that a
35 producer has become a managing general agent as
36 defined in subsection (c), section one, the insurer shall
37 promptly notify the producer and the commissioner of
38 such determination and the insurer and producer must
39 fully comply with the provisions of this article within
40 thirty days thereafter.

41 (g) An insurer shall not appoint to its board of
42 directors an officer, director, employee, subproducer or
43 controlling shareholder of its managing general agents.
44 This subsection shall not apply to relationships governed
45 by the Insurance Holding Company Act or the Business

46 Transacted with Producer-Controlled Insurer Act.

§33-37-5. Examination authority.

1 The acts of a managing general agent are considered
2 to be the acts of the insurer on whose behalf such agent
3 is acting. A managing general agent may be examined
4 as if it were the insurer pursuant to the provisions of
5 section nine, article two of this chapter.

§33-37-6. Penalties and liabilities.

1 (a) If the commissioner finds after a hearing con-
2 ducted in accordance with section thirteen, article two
3 of this chapter that any person has violated any
4 provision of this article, the commissioner may order:

5 (1) For each separate violation, a penalty in an amount
6 of one thousand dollars;

7 (2) Revocation or suspension of the producer's license;
8 and

9 (3) Reimbursement by the managing general agent of
10 the insurer, the rehabilitator or liquidator of the insurer
11 for any losses incurred by the insurer caused by a
12 violation of this article committed by the managing
13 general agent.

14 (b) The decision, determination or order of the
15 commissioner pursuant to subsection (a) of this section
16 shall be subject to judicial review pursuant to section
17 fourteen, article two of this chapter.

18 (c) Nothing contained in this section shall affect the
19 right of the commissioner to impose any other penalties
20 provided for in this chapter.

21 (d) Nothing contained in this article is intended to or
22 shall in any manner limit or restrict the rights of
23 policyholders, claimants and creditors.

§33-37-7. Rule-making authority.

1 The commissioner is thereby authorized to promul-

2 gate reasonable rules for the implementation and
3 administration of the provisions of this article, pursuant
4 to chapter twenty-nine-a of this code.

Enr. Com. Sub. for H. B. 4666] 90

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

Henry Beck

Chairman Senate Committee

Bennett C. Moore

Chairman House Committee

Originating in the House.

Takes effect July 1, 1992.

Parilla Albus

Clerk of the Senate

Donald L. Karp

Clerk of the House of Delegates

Kurt Boudette

President of the Senate

Bob Cole

Speaker of the House of Delegates

The within is approved this the *1st*
day of *April*, 1992.

Yaston Caperton

Governor

PRESENTED TO THE
GOVERNOR

Date 3/30/92

Time 2:45 pm