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
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
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
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
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 this chapter and perform the duties required thereunder; shall affix the commissioner's official seal to all documents and papers required to be filed in other states by domestic insurers and to other papers when an official seal is required; and shall, on or before the tenth day of each month, pay into the state treasury all fees and moneys which he or she has received during the preceding calendar month.

10. (b) Notwithstanding any provisions of this code to the contrary, the commissioner may acquire such legal services as are deemed necessary, including representation of the commissioner before any court or administrative body. Such counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commissioner may call upon the attorney general for 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.

(a) Each licensed insurer shall annually on or before the first day of March, unless the time is extended by the commissioner for good cause shown, file with the commissioner a true statement of its financial condition, transactions and affairs as of the preceding thirty-first day of December. Such statement shall be on the appropriate national association of insurance commissioners annual statement blank; shall be prepared in accordance with the national association of insurance commissioners annual statement instructions handbook; and shall follow the accounting practices and procedures prescribed by the national association of insurance commissioners accounting practices and procedures manual as amended: Provided, That each licensed insurer shall also file true statements of financial condition on a more frequent basis if the commissioner so orders. The commissioner shall establish the frequency, due date and form acceptable to him or her for such filings: Provided, however, That the statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise.

(b) Each domestic insurer shall also file with the commissioner a true quarterly statement of its financial condition, transactions and affairs as of the thirty-first day of March, the thirtieth day of June, and the thirtieth day of September of each year. Quarterly statements shall be due forty-five days after the end of each quarter. All quarterly statements shall be submitted on the appropriate national association of insurance commissioners quarterly statement blank; shall be prepared in accordance with the national association of insurance commissioners quarterly statement instructions; and shall follow the accounting practices and procedures prescribed by the national association of insurance commissioners accounting practices and procedures manual, as amended. The commissioner may
subject any licensed insurer to the requirements of this section whenever the commissioner deems it necessary.

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

(d) Each domestic, foreign and alien insurer, organization or corporation who is subject to the requirements of this section shall annually, on or before the first day of March each year, and forty-five days after the end of the first, second and third calendar quarters, file with the national association of insurance commissioners a copy of its annual statement convention blank and the quarterly statement blanks, along with such additional filings as prescribed by the commissioner and shall pay the fee established by the national association of insurance commissioners for filing, review or processing of the information. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and any other required information. Any amendments and addenda to the annual statement filing and quarterly statement filings subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

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

(f) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks and the
quarterly statement blanks shall be acting as agents of
the commissioner under the authority of this article and
shall not be subject to civil liability for libel, slander or
any other cause of action by virtue of their collection,
review, and analysis or dissemination of the data and
information collected from the filings required
hereunder.

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

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

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

(j) The commissioner shall promulgate legislative
rules in accordance with the provisions of chapter
twenty-nine-a of this code to effectuate the requirements
of this article.

§33-4-15. Reinsurance.

(a) An insurer shall reinsure its risks, or any part
thereof, only in solvent insurers having surplus to
policyholders not less in amount than the paid-in capital
required under this chapter of a stock insurer licensed
to transact like kinds of insurance.

(b) Credit for reinsurance shall be governed by the
provisions of sections fifteen-a and fifteen-b of this
article.

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

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

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

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

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

(2) Is licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia;

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

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

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

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

(7) Has remitted the applicable processing fee with its
application for accreditation;

(8) Files with the commissioner after initial accreditation on or before the first day of March of each year a true statement of its financial condition, transactions and affairs as of the preceding thirty-first day of December. Such statement shall be on the appropriate national association of insurance commissioners annual statement blank; shall be prepared in accordance with the national association of insurance commissioners annual statement instructions; and shall follow the accounting practices and procedures prescribed by the national association of insurance commissioners accounting practices and procedures manual as amended. Such statement shall be accompanied by the applicable annual statement filing fee. The commissioner may grant extensions of time for filing of this annual statement upon application by the accredited reinsurer; and

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

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

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

(1) Credit shall be allowed when the reinsurance is
(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

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

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

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

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

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

(4) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund as required by subsection (d) herein in a qualified United States financial institution, as defined by this section, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest, and complies with the
provisions of subdivision (6) herein.

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

(6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

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

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

(d) Whenever an assuming insurer establishes a trust fund for the payment of claims pursuant to the provisions of this section, the following requirements shall apply:

(1) The assuming insurer shall report annually to the
commissioner information substantially the same as that
required to be reported on the national association of
insurance commissioners annual statement form by
licensed insurers to enable the commissioner to deter-
mine the sufficiency of the trust fund. In the case of a
single assuming insurer, the trust shall consist of a
trusteed account representing the assuming insurer’s
liabilities attributable to business written in the United
States and, in addition, the assuming insurer shall
maintain a trusteed surplus of not less than twenty
million dollars. In the case of a group of individual
unincorporated underwriters, the trust shall consist of
a trusteed account representing the group’s liabilities
attributable to business written in the United States
and, in addition, the group shall maintain a trusteed
surplus of which one hundred million dollars shall be
held jointly for the benefit of United States ceding
insurers of any member of the group. Such group shall
make available to the commissioner an annual certifi-
cation of the solvency of each underwriter by the group’s
domiciliary regulator and its independent public
accountants.

(2) In the case of a group of incorporated insurers
under common administration which complies with the
filing requirements contained in the previous para-
graph; which has continuously transacted an insurance
business outside the United States for at least three
years immediately prior to making application for
accreditation; which submits to this state’s authority to
examine its books and records and bears the expense of
the examination; and which has aggregate policy-
holders’ surplus of ten billion dollars, the trust shall be
in an amount equal to the group’s several liabilities
attributable to business ceded by United States ceding
insurers to any member of the group pursuant to
reinsurance contracts issued in the name of such group.
The group shall also maintain a joint trusteed surplus
of which one hundred million dollars shall be held
jointly for the benefit of United States ceding insurers
of any member of the group as additional security for
any such liabilities. Each member of such group shall
make available to the commissioner an annual certifi-
cation of the member's solvency by the member's domiciliary regulator and its independent public accountant.

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

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

(e) A reduction from liability for the reinsurance ceded by a ceding insurer subject to the requirements of this article to an assuming insurer not meeting the requirements of subsection (c) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder: Provided, That such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined by this section. Such security may be in the form of:
(1) Cash;
(2) Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets; or
(3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined by this section, no later than the thirty-first day of December of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement: Provided, That letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.
(f) For purposes of this section, a “qualified United States financial institution” means an institution that:
(1) Is organized or licensed under the laws of the United States or any state thereof;
(2) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
(3) Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.
(g) A “qualified United States financial institution” means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:
(1) Is organized or, in the case of a United States branch or agency office of a foreign banking organiza-
tion, licensed under the laws of the United States or any
state thereof and has been granted authority to operate
with fiduciary powers; and
(2) Is regulated, supervised and examined by federal
or state authorities having regulatory authority over
banks and trust companies.
(h) The provisions of this section shall apply to all
cessions on or after the first day of January, one
thousand nine hundred ninety-three.
§33-4-15b. Life reinsurance agreements; reduction of
liability; requirements.
(a) This section applies to all domestic life insurers
and to all other licensed life insurers who are not subject
to a substantially similar law or regulation in their
domiciliary state.
(b) A life insurer subject to this article shall not, for
reinsurance ceded, reduce any liability or establish any
asset in any financial statement filed with the depart­
ment if, by the terms of the reinsurance agreement, in
substance or effect, any of the following conditions exist:
(1) The primary effect of the reinsurance agreement
is to transfer deficiency reserves or excess interest
reserves to the books of the reinsurer for a “risk charge”
and the agreement does not provide for significant
participation by the reinsurer in one or more of the
following risks: Mortality, morbidity, investment or
surrender benefit;
(2) The reserve credit taken by the ceding insurer is
not in compliance with this chapter, including actuarial
interpretations or standards adopted by the department;
(3) The reserve credit taken by the ceding insurer is
greater than the underlying reserve of the ceding
company supporting the policy obligations transferred
under the reinsurance agreement;
(4) The ceding insurer is required to reimburse the
reinsurer for negative experience under the reinsurance
agreement: Provided, That neither offsetting experience
refunds against prior years’ losses nor payment by the
ceding insurer of an amount equal to prior years’ losses
upon voluntary termination of in-force reinsurance by
that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience;

(5) The ceding insurer can be deprived of surplus at the reinsurer’s option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer: Provided, That termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus;

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

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

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

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

(d) A reinsurance agreement or amendment to any agreement shall not be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner, unless the agreement, amendment or a letter of intent has been duly executed by both parties no later than the “as of date” of the financial statement.

(e) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agree-
ment shall be executed within a reasonable period of
time, not exceeding ninety days from the execution date
of the letter of intent, in order for credit to be granted
for the reinsurance ceded.

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

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

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

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

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

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

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


(a) A domestic stock or mutual insurer may accept
reinsurance for the same kinds of insurance and within
the same limits as it is authorized to transact direct
insurance, unless such reinsurance is prohibited by its
articles of incorporation.
(b) A domestic stock or mutual insurer may reinsure all or substantially all its business in force, or substantially all of a major class thereof, with another insurer by an agreement of bulk reinsurance; but such agreements shall not become effective unless filed in advance with and approved in writing by the commissioner.

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

(d) For the purposes of this section, “bulk reinsurance” means any quota share, surplus aid or portfolio reinsurance agreement which, of itself or in combination with other similar agreements, assumes fifty-one percent or more of the liability of the reinsured company.

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

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

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

ARTICLE 10. REHABILITATION AND LIQUIDATION.

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

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

(a) Is impaired or insolvent.

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

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

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

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

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

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

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

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

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

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

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

(a) Definitions:

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

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

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

(A) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations, or

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

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

27 (4) “Medicare” means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

28 (b) Standards for policy provisions:

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

30 (A) Terms of renewability;

31 (B) Initial and subsequent conditions of eligibility;

32 (C) Nonduplication of coverage;

33 (D) Probationary period;

34 (E) Benefit limitations, exceptions and reductions;

35 (F) Elimination period;

36 (G) Requirements for replacement;

37 (H) Recurrent conditions; and

38 (I) Definitions of terms.

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

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

(c) Minimum standards for benefits.
The commissioner shall issue reasonable rules to
establish minimum standards for benefits under med-
icare supplement policies.

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

(e) Disclosure standards:
(1) In order to provide for full and fair disclosure in
the sale of accident and sickness policies, to persons
eligible for medicare, the commissioner may require by
rule that no policy of accident and sickness insurance
may be issued for delivery in this state and no certificate
may be delivered pursuant to such a policy unless an
outline of coverage is delivered to the applicant at the
time application is made.
(2) The commissioner shall prescribe the format and content of the outline of coverage required by paragraph one. For purposes of this paragraph, "format" means style, arrangements and overall appearance, including such items as size, color and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

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

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

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

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

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare, but in no event later than the time of policy delivery.

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

(f) Notice of free examination.
Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant shall have the right to return the policy of certificate within ten days from its delivery and have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

(g) Administrative procedures.

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

(h) Separability.

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

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


Each company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article seven (assets and liabilities), article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article ten...
assessments shall not be levied against any former member of a farmers' mutual fire insurance company who is no longer a member of the company at the time the order to show cause was issued, article eleven (unfair trade practices), article twelve (agents, brokers and solicitors) except that the agent's license fee shall be five dollars, article twenty-six (West Virginia Guaranty Association Act), article twenty-seven (insurance holding company systems), article thirty (mine subsidence insurance) except that under the provisions of section six, article thirty, a farmers' mutual insurance company shall have the option of offering mine subsidence coverage to all of its policyholders but shall not be required to do so, article thirty-three (annual audited financial report), article thirty-four (administrative supervision), article thirty-four-a, (standards and commissioner's authority for companies deemed to be in hazardous financial condition), article thirty-five, (criminal sanctions for failure to report impairment), article thirty-six (business transacted with producer-controlled property/casualty insurer) and article thirty-seven (managing general agents); but only to the extent these provisions are not inconsistent with the provisions of this article.


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

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


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

(b) A farmers' mutual fire insurance company may merge or consolidate with another farmers' mutual fire insurance company or merge into a domestic mutual insurer in the manner provided in section twenty-eight, article five of this chapter for the merger or consolida-
tion of other types of domestic mutual insurers. In the event of a merger between a farmers’ mutual fire insurance company and a domestic mutual insurer, the domestic mutual insurer shall be the surviving entity.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.


Every fraternal benefit society shall be governed and be subject, to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions), article six, section thirty (fee for form and rate filing), article seven (assets and liabilities), article ten (rehabilitation and liquidation), article eleven (unfair trade practices), article twelve (agents, brokers, solicitors and excess lines), article thirteen (life insurance), article fifteen-a (long-term care insurance), article twenty-seven (insurance holding company systems), article thirty-three (annual audited financial report), article thirty-four (administrative supervision), article thirty-four-a (standards and commissioner’s authority for companies deemed to be in hazardous financial condition), article thirty-five (criminal sanctions for failure to report impairment), and article 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.

Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that under section nine of article two
examinations shall be conducted at least once every four
years, article four (general provisions) except that
section sixteen of article four shall not be applicable
thereto, article six, section thirty-four (fee for form and
rate filing), article six-c (guaranteed loss ratio), article
seven (assets and liabilities), article eleven (unfair trade
practices), article twelve (agents, brokers and solicitors)
except that the agent's license fee shall be five dollars,
section fourteen, article fifteen (individual accident and
sickness insurance), article fifteen-a (long-term care
insurance), section three-a, article sixteen (mental
illness), section three-c, article sixteen (group accident
and sickness insurance), section three-d, article sixteen
(medicare supplement insurance), section three-f, article
sixteen (treatment of temporomandibular joint disorder
and craniomandibular disorder), article sixteen-c (small
employer group policies), article sixteen-d (marketing
and rate practices for small employers), article twenty-
six-a (West Virginia life and health insurance guaranty
association act), after the first day of October, one
thousand nine hundred ninety-one, article twenty-seven
(insurance holding company systems), article twenty-
eight (individual accident and sickness insurance
minimum standards), article thirty-three (annual
audited financial report), article thirty-four (administrative
supervision), article thirty-four-a, (standards and
commissioner's authority for companies deemed to be in
hazardous financial condition), article thirty-five,
(criminal sanctions for failure to report impairment)
and article thirty seven (managing general agents); and
no other provision of this chapter may apply to such
corporations unless specifically made applicable by the
provisions of this article. If, however, any such corpo-
rations is converted into a corporation organized for a
pecuniary profit, or if it transacts business without
having obtained a license as required by section five of
this article, it shall thereupon forfeit its right to these
exemptions.


The commissioner may apply to the court for an order
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
6 (a) Is impaired or insolvent.

7 (b) Has refused to submit to reasonable examination
8 by the commissioner its property, books, records,
9 accounts or affairs or those of any subsidiary or related
10 company within the control of the corporation, or those
11 of any person having executive authority in the corpo-
12 ration as far as they pertain to the corporation.
13
14 (c) Has failed to comply with an order of the commis-
15 sioner to make good an impairment of surplus.
16
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 corporation or other legal entity without having first
22 obtained the written approval of the commissioner.
23
24 (e) Has willfully violated its charter, articles of
25 incorporation, or by-laws, or any law of this state or any
26 valid order of the commissioner.
27
28 (f) Has an officer, director or manager who has
29 refused to be examined under oath concerning its
30 affairs, for which purpose the commissioner is hereby
31 authorized to conduct and to enforce by all appropriate
32 and available means any such examination under oath
33 in any other state or territory of the United States, in
34 which any such officer, director or manager may then
35 presently be, to the full extent permitted by the laws of
36 such other state or territory, this special authorization
37 considered.
38
39 (g) Has been the subject of an application for the
40 appointment of a receiver, trustee, custodian or seques-
41 trator of the corporation or its property otherwise than
42 pursuant to the provisions of this chapter, but only if
43 such appointment has been made or is imminent and its
44 effect is or would be to oust the courts of this state of
45 jurisdiction hereunder.
46
47 (h) Has consented to such an order through a majority
of its directors, stockholders, members or subscribers.

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

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

ARTICLE 25. HEALTH CARE CORPORATIONS.

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

Corporations organized under this article shall be subject to supervision and regulation of the insurance commissioner. Such corporations organized under this article, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article six-c (guaranteed loss ratio), article seven, (assets and liabilities), article eight (investments), article ten (rehabilitation and liquidation), section fourteen, article fifteen (individual accident and sickness insurance), article sixteen-c (small employer group policies), article sixteen-d (marketing and rate practices for small employers), article twenty-six-a (West Virginia life and health insurance guaranty association act), article twenty-seven (insurance holding company systems), article thirty-three (annual audited financial report), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition), article thirty-five (criminal sanctions for failure to report impairment) and article thirty-seven (managing general agents); and no other 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-
ual accident and sickness insurance), section three-f, article sixteen (treatment of temporomandibular disorder and craniomandibular disorder), article sixteen-c (small employer group policies), article sixteen-d (marketing and rate practices for small employers), article twenty-seven (insurance holding company systems), article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition), article thirty-five (criminal sanctions for failure to report impairment) and article thirty-seven (managing general agents) shall be applicable to any health maintenance organization granted a certificate of authority under this article.

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

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.


As used in this article:

(a) An “affiliate” of, or person “affiliated” with, a specific person, is a person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) “Commissioner” means the insurance commissioner, his or her deputies, or the insurance department, as appropriate.

(c) “Control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to
vote, or holds proxies representing ten percent or more
of the voting securities of any other person or controls
or appoints a majority of the board of directors, voting
members or similar governing body of any other person.
This presumption may be rebutted by a showing made
in the manner provided by subsection (b)(i), section four
of this article that control does not exist in fact. The
commissioner may determine, after furnishing all
persons in interest notice and opportunity to be heard
and making specific findings of fact to support such
determination, that control exists in fact, notwithstanding
the absence of a presumption to that effect.

(d) “Insurance holding company system” consists of
two or more affiliated persons, one or more of which is
an insurer.

(e) “Insurer” means any person or persons or corpo-
racion, partnership or company authorized by the laws
of this state to transact the business of insurance in this
state, except that it shall not include agencies, author-
ities or instrumentalities of the United States, its
possessions and territories, the commonwealth of Puerto
Rico, the District of Columbia, or a state or political
subdivision of a state.

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

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

(h) A “subsidiary” of a specified person is an affiliate
controlled by such person directly or indirectly through
one or more intermediaries.
(i) “Voting security” includes any security convertible into or evidencing a right to acquire a voting security.

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

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

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

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

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

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

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

(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;

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

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

(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;
(10) Financing of insurance premiums, agents and other forms of consumer financing;

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

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

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

(1) Invest in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of such insurer's assets or fifty percent of such insurer's surplus as regards policyholders: Provided, That after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

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

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

(2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage
exclusively in the ownership and management of assets authorized as investments for the insurer: Provided, That each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subsection (b)(1) of this section or in article eight of this chapter applicable to the insurer. For the purpose of this subdivision, "the total investment of the insurer" includes:

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

(B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries: Provided, That after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

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

(d) Whether any investment pursuant to subsection (a) or (b) of this section meets the applicable requirements thereof is to be determined before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any
return of capital invested, not including dividends.

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

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

(a) Any person other than the issuer shall not make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and a person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and, to the extent permitted by applicable federal laws, rules and regulations, such insurer has sent to its shareholders a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

(b) For purposes of this section, a “domestic insurer” includes any other person controlling a domestic insurer
unless such other person as determined by the commis-
sioner is either directly or through its affiliates
primarily engaged in business other than the business
of insurance.

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

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

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

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

(4) The source, nature and amount of the consideration
used or to be used in effecting the merger or other
acquisition of control, a description of any transaction
wherein funds were or are to be obtained for any such
purpose, including any pledge of the insurer's stock, or
the stock of any of its subsidiaries or controlling
affiliates, and the identity of persons furnishing such
consideration: Provided, That where a source of such
consideration is a loan made in the lender's ordinary
course of business, the identity of the lender shall
remain confidential, if the person filing such statement
so requests.
(5) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

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

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

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

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

(10) A description of the purchase of any security referred to in subsection (a) during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.
(11) A description of any recommendations to pur-
chase any security referred to in subsection (a) made
during the twelve calendar months preceding the filing
of the statement, by an acquiring party, or by anyone
based upon interviews or at the suggestion of such
acquiring party.

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

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

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

(d) If the person required to file the statement
referred to in subsection (a) is a partnership, limited
partnership, syndicate or other group, the commissioner
may require that the information called for by subdi-
visions (1) through (14) of this subsection shall be given
with respect to each partner of such partnership or
limited partnership, each member of such syndicate or
group, and each person who controls such partner or
member. If any partner, member or person is a
 corporation or the person required to file the statement
referred to in subsection (a) is a corporation, the
commissioner may require that the information called
for by subdivisions (1) through (14) shall be given with
respect to such corporation, and each person who is
directly or indirectly the beneficial owner of more than
ten percent of the outstanding voting securities of such
corporation.

(e) If any material change occurs in the facts set forth
in the statement filed with the commissioner and sent
to such insurer pursuant to this section, an amendment
setting forth such change, together with copies of all
documents and other material relevant to such change,
shall be filed with the commissioner and sent to such
insurer within two business days after the person learns
of such change. Such insurer shall send such amend-
ment to its shareholders.

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

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

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

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

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

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

(5) The plans or proposals which the acquiring party
has to liquidate the insurer, sell its assets or consolidate
or merge it with any person, or to make any other
material change in its business or corporate structure
or management, are unfair and unreasonable to policy-
holders of the insurer and not in the public interest;

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

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

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

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

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

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

(l) The following are violations of this section:

(1) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b) of this section; or

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

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

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

(a) Every insurer which is authorized to do business
in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section.

Any insurer which is subject to registration under this section shall register within sixty days after the effective date of this article or fifteen days after it becomes subject to registration, whichever is later, and annually thereafter by June first of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement, the summary described in subsection (c) of this section, or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

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

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

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

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

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

(B) Purchases, sales or exchanges of assets;

(C) Transactions not in the ordinary course of
(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(F) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(G) Dividends and other distributions to shareholders; and

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

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

(c) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

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

(e) Each registered insurer shall keep current the
information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen days after the end of the month in which it learns of each such change or addition.

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

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

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

(i) The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

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

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

(l) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any
member of an insurance holding company system. The
disclaimer shall fully disclose all material relationships
and bases for affiliation between such person and such
insurer as well as the basis for disclaiming such
affiliation. After a disclaimer has been filed, the insurer
shall be relieved of any duty to register or report under
this section which may arise out of the insurer's
relationship with such person unless and until the
commissioner disallows such a disclaimer. The commis-
sioner shall disallow such a disclaimer only after
furnishing all parties in interest with notice and
opportunity to be heard and after making specific
findings of fact to support such disallowance.

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

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

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

(1) The terms shall be fair and reasonable;
(2) Charges or fees for services performed shall be
reasonable;
(3) Expenses incurred and payment received shall be
allocated to the insurer in conformity with customary
insurance accounting practices consistently applied;
(4) The books, accounts and records of each party shall
be so maintained as to clearly and accurately disclose
the precise nature and details of the transactions,
including such accounting information as is necessary to
support the reasonableness of the charges or fees to the
respective parties; and
(5) The insurer's surplus as regards policyholders
following any dividends or distributions to shareholder
affiliates shall be reasonable in relation to the insurer's
outstanding liabilities and adequate to its financial needs.

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

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

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

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

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

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

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

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

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

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

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment such investment so warrants.

(c) An insurer subject to registration under section four of this article shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (1) thirty days after the commissioner has received notice of the declaration
thereof and has not within such period disapproved such payment, or (2) the commissioner shall have approved such payment within such thirty-day period.

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

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

(f) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within such
(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments provided such transactions are equal to or exceed: The lesser of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders; each as of the thirty-first day of December next preceding;

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

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

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

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

(g) Nothing contained in subsection (h) herein shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same
holding company system, would be otherwise contrary to law.

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

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

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

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

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

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperatively, or jointly using personnel, property or services with one or more other persons under arrangements meeting the standards of subsection (a) of this section.

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

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

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

(d) Whenever it appears to the commissioner that any person or any director, officer, employee or agent thereof has committed a willful violation of this article,
the commissioner may cause criminal proceedings to be
instituted against such person or the responsible
director, officer, employee or agent thereof. Any insurer
who willfully violates this article is guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
more than ten thousand dollars. Any individual who
willfully violates this article is guilty of a misdemeanor,
and, upon conviction thereof, shall be fined in his or her
individual capacity not more than ten thousand dollars
or, if such willful violation involves the deliberate
perpetration of a fraud upon the commissioner, is guilty
of a felony, and, upon conviction thereof, shall be
imprisoned not less than one year nor more than three
years, or both fined and imprisoned.

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


(a) If an order for liquidation or rehabilitation of a
domestic insurer has been entered, the receiver ap-
pointed under such order shall have a right to recover
on behalf of the insurer, (1) from any parent corporation
or holding company or person or affiliate who otherwise
controlled the insurer, the amount of distributions (other
than distributions of shares of the same class of stock)
paid by the insurer on its capital stock, or (2) any
payment in the form of a bonus, termination settlement
or extraordinary lump sum salary adjustment made by
the insurer or its subsidiary or subsidiaries to a director,
officer or employee, when the distribution or payment
pursuant to (1) or (2) is made at any time during the
one year preceding the petition for liquidation, conser-
vation or rehabilitation, as the case may be, subject to
the limitations of subsections (b), (c) and (d) of this
section.

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

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

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

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

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

§33-28-5b. Medicare supplement insurance.
(a) Definitions:

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

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

(A) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations, or

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

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

(3) "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(b) Standards for policy provisions:

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

(A) Terms of renewability;

(B) Initial and subsequent conditions of eligibility;

(C) Nonduplication of coverage;

(D) Probationary period;

(E) Benefit limitations, exceptions and reductions;

(F) Elimination period;

(G) Requirements for replacement;

(H) Recurrent conditions; and

(I) Definitions of terms.

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

(3) Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(c) Minimum standards for benefits.

The commissioner shall issue reasonable rules to establish minimum standards for benefits under medicare supplement policies.

(d) Loss ratio standards.

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

(e) Disclosure standards:

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

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

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

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

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

(D) A statement that the outline of coverage is a
summary of the policy issued or applied for and that the
policy should be consulted to determine governing
contractual provisions.
(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare, but in no event later than the time of policy delivery.

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

(f) Notice of free examination.

Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant shall have the right to return the policy of certificate within ten days from its delivery and have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

(g) Administrative procedures.

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

(h) Separability.

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

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-6. Corporate organization.

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

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

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

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

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

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

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

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

(3) Such other aspects as the commissioner deems
(e) The articles of association, such certificate and the organization fee shall be transmitted to the secretary of state, who shall thereupon record both the articles of incorporation and the certificate.

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

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

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

ARTICLE 32. RISK RETENTION ACT.

§33-32-1. Purpose and short title.

The purpose of this act is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal liability risk retention act of 1986, hereinafter referred to as “RRA 1986.” This article may be referred to as the “Risk Retention Act of West Virginia.”


As used in this article, the term:

(a) “Commissioner” means the insurance commissioner of the state of West Virginia or the commissioner, director or superintendent of insurance in any other state.

(b) “Completed operations liability” means liability
arising out of the installation, maintenance or repair of any product at a site which is now owned or controlled by:

(1) Any person who performs that work; or

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

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

(1) For a corporation, the state in which the purchasing group is incorporated; and

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

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

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

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

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

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

(1) Any business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations;
(2) Any activity of any state or local government, or any agency or political subdivision thereof; or

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

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

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

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

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

(3) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(4) Pro forma financial statements and projections;

(5) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(6) Identification of management, underwriting procedures, managerial oversight methods, investment
policies and reinsurance agreements;

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

(8) Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

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

(j) “Purchasing group” means any group which:

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

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

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

(4) Is domiciled in any state.

(k) “Risk retention group” means any corporation or other limited liability association formed under the laws of any state:

(1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure
of its group members;

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

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

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

(4) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

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

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

(ii) Its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(6) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises or operations;
(7) Whose activities do not include the provision of insurance other than:
(A) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and
(B) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in businesses or activities so that such group or member meets the reinsurance requirement set forth herein, from membership in the risk retention group which provides such reinsurance;
and
(8) The name of which includes the phrase “Risk Retention Group.”

(1) “State” means any state of the United States or the District of Columbia.

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

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

(b) Notwithstanding any other provision of this chapter to the contrary, all risk retention groups chartered in this state shall file with the commissioner and the national association of insurance commissioners, an annual statement on a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner and completed in accordance with the national association of insurance commissioners’ instructions and the national
association of insurance commissioners accounting
practices and procedures manual.

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

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

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

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

(a) Risk retention groups chartered in states other
than this state and seeking to do business as a risk
retention group in this state must observe and abide by
the laws of this state.
(b) Before offering insurance in this state, a risk retention group shall submit the following information to the commissioner on a form prescribed by the national association of insurance commissioners:

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

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

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

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

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

(d) A risk retention group shall not commence offering insurance in this state prior to receiving a certificate of
registration from the commissioner.

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

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

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

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

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

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

§33-32-5. Tax on premiums collected.

(a) Each risk retention group shall be subject to the same interests, fines and penalties for nonpayment as that generally applicable to insurers under article three, chapter thirty-three of this code: Provided, That the premium tax or other taxes on each risk retention group shall be in accordance with the provisions of this section. Each risk retention group insurance company shall pay to the commissioner, in the month of February of each year, a tax at the rate of three quarters of one percent on the gross amount of all premiums collected or contracted for on policies or contracts of insurance covering property or risks in this state and on risk and property situated elsewhere upon which no premium tax
is otherwise paid during the year ending December 31 next preceding, after deducting from the gross amount of premiums subject to the tax amount received as reinsurance premiums on business in the state and the amount paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders:

*Provided, however,* That the three quarters of one percent premium tax provided for herein shall be waived for a period of five years and thereafter be applicable at a reduced rate of one half of one percent of the gross amount of premiums provided for herein-above, if the said risk retention groups make a minimum qualified investment of two million dollars in the state of West Virginia during the five year waiver period, as a direct result thereof and the tax commissioner so certifies.

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

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

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

1 Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner. The risk retention group shall be subject to the provisions of section nine, article two of this chapter in regard to the expense and conduct of the examination. Any such examination shall be conducted in accordance with the national association of insurance commissioners examiners handbook.


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

   NOTICE

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


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

8 (b) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, such risks, wherever resident or located, shall not be covered
by any insurance guaranty fund or similar mechanism in this state.

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

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

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

(1) Prohibit the establishment of a purchasing group;

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

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

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

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

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

(7) Otherwise discriminate against a purchasing group or any of its members; or
(8) Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in this state.

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

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

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

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

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

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

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

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

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

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

(c) The purchasing group shall register with and designate the commissioner (or other appropriate authority) as its agent solely for the purpose of receiving service of legal documents or process: Provided, That such requirements shall not apply in the case of a purchasing group which:
(1) Was domiciled before the first day of April, one thousand nine hundred eighty-six in any state of the United States; and

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

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

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

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

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

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

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

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

(3) Determine appropriate tax treatment.

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

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

(a) A purchasing group may not purchase insurance
from a risk retention group that is not chartered in a
state or from an insurer not admitted in the state in
which the purchasing group is located, unless the
purchase is effected through a licensed agent or broker
acting pursuant to the surplus lines laws and regula-
tions of such state.

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

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

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

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

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

The commissioner is authorized to make use of any of
the powers established under this chapter of this code
to enforce the laws of this state so long as those powers
are not specifically preempted by the national product
liability risk retention act of 1981, as amended by the
risk retention amendments of 1986. This includes, but
is not limited to, the commissioner's administrative
authority to investigate, issue subpoenas, conduct
depositions and hearings, issue orders, and impose
penalties and seek injunctive relief. With regard to any
investigation, administrative proceedings, or litigation,
the commissioner can rely on the law and rules of the
state. The injunctive authority of the commissioner in
regard to risk retention groups is restricted by the
requirement that any injunction be issued by a court of
competent jurisdiction.

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

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

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

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

(d) A person, or a person working for a firm,
association or corporation, shall not act or aid in any
manner in soliciting, negotiating or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless such person, or person working for a firm, association or corporation, is licensed as an excess line broker in accordance with section thirteen, article twelve of this chapter.

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

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


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

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

ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED PROPERTY/CASUALTY INSURER ACT.
§33-36-1. Short title.

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

§33-36-2. Definitions.

As used in this article:

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

(b) “Reinsurance intermediary” means any person, firm, association or corporation that acts as a producer in soliciting, negotiating or procuring the making of any reinsurance contract or binder on behalf of a ceding insurer or acts as a producer in accepting any reinsurance contract or binder on behalf of an assuming insurer.

(c) “Control” or “controlled” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a contract for goods or nonmanagement services, or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the powers to vote, or holds proxies representing a majority of the outstanding voting securities of any other person. A person may not be deemed to control another person solely by reason of being an officer or director of such other person.

(d) “Licensed property/casualty insurer” or “insurer” means any person, firm, association or corporation duly licensed to transact a property/casualty insurance business in this state and which issues policies covered
by the provisions of the West Virginia Insurance Guaranty Association Act contained in article twenty-six of this chapter: Provided, That entities which are not licensed property/casualty insurers for the purposes of this article include, but are not limited to, the following:

(1) All nonadmitted insurers;


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

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

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

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

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

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

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

(A) Demonstrate that such producer's dealings with
its controlled insurer were fair and equitable and in
compliance with article twenty-seven of this chapter;
and
(B) Accurately disclose the nature and details of its
transactions with the controlled insurer, including such
information as is necessary to support the charges or
fees to the respective parties; or
(4) The controlled insurer, with respect to business
placed by the controlling producer, either failed to
establish or deviated from its underwriting procedures;
or
(5) The controlled insurer's capitalization at the time
the business was placed by the controlling producer and
with respect to such business was not in compliance with
criteria established by the commissioner or this chapter;
or
(6) The controlling producer or the controlled insurer
failed to substantially comply with article twenty-seven
of this chapter and any rules relative thereto.

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

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

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

(2) Such producer, prior to the effective date of the
policy, delivers written notice to the prospective insured
disclosing the relationship between such producer and
the controlled insurer. Such disclosure, signed by the
insured, shall be retained in the underwriting file until
the filing of the report on examination covering the
period in which the coverage is in effect: Provided, That
if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his or her records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has notified or will notify the insured;

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

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

(5) The controlled insurer shall report annually to the commissioner the amount of commissions paid to such producer, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance; and

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

(b) Any reinsurance intermediary that has control of an assuming insurer shall not directly or indirectly place business with such insurer in any transaction in which such reinsurance intermediary is acting as a
broker on behalf of the ceding insurer. Any reinsurance intermediary that has control of a ceding insurer shall not directly or indirectly accept business from such insurer in any transaction in which such reinsurance intermediary is acting as a producer on behalf of the assuming insurer. The prohibitions in this subsection shall not apply to a reinsurance intermediary which makes a full and complete written disclosure to the parties of its relationship with the assuming or ceding insurer prior to completion of the transaction.

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

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

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

(c) Upon the finding, pursuant to the hearing described in subdivision (b) of this subsection, that the controlling producer committed a violation, as defined in subsection (f), section two of this article, and the controlling producer failed to establish that such violation did not substantially contribute to the insolvency, the controlling producer shall reimburse the West Virginia insurance guaranty association for all payments made for losses, loss adjustment and adminis-
traffice expenses on the business placed by such pro-
ducer in excess of gross earned premiums and invest-
ment income earned on premiums and loss reserves for
such business.

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

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

ARTICLE 37. MANAGING GENERAL AGENTS.

§33-37-1. Definitions.

For the purposes of this article:

(a) “Actuary” means a person who is a member in
good standing of the American academy of actuaries.

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

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

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

(c) “Managing general agent” means any person, firm,
association or corporation who negotiates and binds
ceding reinsurance contracts on behalf of an insurer or
manages all or part of the insurance business of an
insurer, including the management of a separate
division, department or underwriting office, and acts as
an agent for such insurer whether known as a managing
general agent, manager or other similar term, who, with
or without the authority, either separately or together
with affiliates, produces, directly or indirectly, and
underwrites an amount of gross direct written premium
equal to or greater than five percent of the policyholder
surplus as reported in the last annual statement of the
insurer in any one quarter or year, together with one
or more of the following:

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

(2) Negotiates reinsurance on behalf of the insurer.

Notwithstanding the preceding provision, the following
persons are not to be considered as managing general
agents for the purposes of this article:

(1) An employee of the insurer;

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

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

(4) The attorney-in-fact authorized by and acting for
the subscribers of a reciprocal insurer or inter-insur-
ance exchange under powers of attorney.

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

§33-37-2. Licensure.

(a) Any person, or a person working for a firm,
association or corporation, shall not act in the capacity
of a managing general agent with respect to risks
located in this state for an insurer licensed in this state
unless such person is licensed and appointed as an agent
of the insurer in this state.

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

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

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


Any person, or a person working for a firm, association or corporation, acting in the capacity of a managing general agent shall not place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and whereby both parties share responsibility for a particular function, which specifies the division of such responsibilities, and which contains the following minimum provisions:

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

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

(c) All funds collected for the account of an insurer will be held by the managing general agent in a
fidiuiary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

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

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

(f) The contract shall contain appropriate underwriting guidelines including:

(1) The maximum annual premium volume;
(2) The basis of the rates to be charged;
(3) The types of risks that may be written;
(4) Maximum limits of liability;
(5) Applicable exclusions;
(6) Territorial limitations;
(7) Policy cancellation provisions; and
(8) The maximum policy period. The insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable laws and rules concerning cancellation and nonrenewal of insurance policies.

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

(1) All claims must be reported to the company in a timely manner.
(2) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:
(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

(B) Involves a coverage dispute;

(C) May exceed the managing general agent’s claims settlement authority;

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

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

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

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

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

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

(j) The managing general agent shall not:
(1) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

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

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

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

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

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

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

(8) Appoint a sub-managing general agent.


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

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

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

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

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

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

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

1 The commissioner is thereby authorized to promul-
gate reasonable rules for the implementation and administration of the provisions of this article, pursuant 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.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect July 1, 1992.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 15th day of April, 1992.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date  3/30/92
Time  2:45 PM