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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



# ENROLLED

HOUSE BILL No. 2286

(By Delegate s. Phillips, P. White, Carpenter,  
Michael and Huntwork)



Passed April 9 1993

In Effect Ninety Days from Passage

**ENROLLED**  
**H. B. 2286**

(By DELEGATES PHILLIPS, P. WHITE,  
CARPER, MICHAEL AND HUNTWORK)

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[Passed April 9, 1993; in effect ninety days from passage.]

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AN ACT to repeal sections five and five-a, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section nine, article two of said chapter; to amend and reenact sections one and five-b, article three; sections fifteen and fifteen-a, article four; section four, article twenty-four; section six, article twenty-five; section two, article twenty-seven, all of said chapter thirty-three; to further amend said article twenty-seven by adding thereto a new section, designated section fourteen; to amend and reenact section eleven, article thirty-one; sections four and seventeen, article thirty-two; sections one, two, three, four, five, six, seven, nine, ten, eleven, and thirteen, article thirty-three; to further amend article thirty-three by adding thereto three new sections, designated sections ten-a, fourteen and fifteen; to amend and reenact section four, article thirty-four-a; to amend and reenact article thirty-six, all of chapter thirty-three; and to further amend said chapter thirty-three by adding thereto a new article, designated article thirty-eight, all relating to insurance; insurance commissioner; examination of insurers, agents, brokers and solicitors; access to books, records, etc.; licensing, fees and taxation of insurers; license required; capital and surplus requirements; general provisions; reinsurance; credit for reinsurance; hospital service corporations, medical service corpora-

tions, dental service corporations and health service corporations; exemptions; applicability of insurance laws; health care corporations; supervision and regulation by insurance commissioner; exemption from insurance laws; annual audited financial report; designation of independent certified public accountant; evaluation of accounting procedures and system of internal control; exemption from compliance; Canadian and British companies; insurance holding company systems; definitions; regulatory authority; captive insurance; reinsurance; risk retention act; risk retention groups not chartered in this state; notice and registration requirements of purchasing groups; standards and commissioner's authority for companies deemed to be in hazardous financial condition; commissioner's authority; business transacted with producer-controlled property/casualty insurer act; short title; definitions; applicability; minimum standards; disclosure; penalties; effective date; reinsurance intermediary act; short title; definitions; licensure; required contract provisions reinsurance intermediary-brokers; books and records reinsurance intermediary-brokers; duties of insurers utilizing the services of a reinsurance intermediary-broker; required contract provisions reinsurance intermediary-managers; prohibited acts; duties of reinsurers utilizing the services of a reinsurance intermediary-manager; examination authority; penalties and liabilities; regulatory authority; effective date.

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

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

eleven and thirteen, article thirty-three, be amended and reenacted; that said article thirty-three be further amended by adding thereto three new sections, designated sections ten-a, fourteen and fifteen; that section four, article thirty-four-a be amended and reenacted; that article thirty-six be amended and reenacted; and that said chapter thirty-three be further amended by adding thereto a new article, designated article thirty-eight, all to read as follows:

**ARTICLE 2. INSURANCE COMMISSIONER.**

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

1 (a) The purpose of this section is to provide an  
2 effective and efficient system for examining the activ-  
3 ities, operations, financial condition and affairs of all  
4 persons transacting the business of insurance in this  
5 state and all persons otherwise subject to the jurisdiction  
6 of the commissioner. The provisions of this section are  
7 intended to enable the commissioner to adopt a flexible  
8 system of examinations which directs resources as may  
9 be deemed appropriate and necessary for the adminis-  
10 tration of the insurance and insurance related laws of  
11 this state.

12 (b) For purposes of this section, the following defini-  
13 tions shall apply:

14 (1) "Commissioner" means the commissioner of  
15 insurance of this state.

16 (2) "Company" or "insurance company" means any  
17 person engaging in or proposing or attempting to  
18 engage in any transaction or kind of insurance or surety  
19 business and any person or group of persons who may  
20 otherwise be subject to the administrative, regulatory or  
21 taxing authority of the commissioner, including, but not  
22 limited to any domestic or foreign stock company,  
23 mutual company, mutual protective association, farmers  
24 mutual fire companies, fraternal benefit society,  
25 reciprocal or inter-insurance exchange, nonprofit  
26 medical care corporation, nonprofit health care corpo-  
27 ration, nonprofit hospital service association, nonprofit  
28 dental care corporation, health maintenance organiza-

29 tion, captive insurance company, risk retention group or  
30 other insurer, regardless of the type of coverage written,  
31 benefits provided or guarantees made by each.

32 (3) "Department" means the department of insurance  
33 of this state.

34 (4) "Examiners" means the commissioner of insu-  
35 rance, or any individual or firm having been authorized  
36 by the commissioner to conduct an examination pursu-  
37 ant to this section, including, but not limited to the  
38 commissioner's deputies, other employees, appointed  
39 examiners or other appointed individuals or firms who  
40 are not employees of the department of insurance.

41 (c) The commissioner or his examiners may conduct  
42 an examination under this section of any company as  
43 often as the commissioner in his or her discretion deems  
44 appropriate. The commissioner or his examiners shall at  
45 least once every three years visit each domestic insurer  
46 and thoroughly examine its financial condition and  
47 methods of doing business and ascertain whether it has  
48 complied with all the laws and regulations of this state.  
49 The commissioner may also examine the affairs of any  
50 insurer applying for a license to transact any insurance  
51 business in this state.

52 (d) The commissioner or his examiners shall, at a  
53 minimum, conduct an examination of every foreign or  
54 alien insurer licensed in this state not less frequently  
55 than once every five years. The examination of an alien  
56 insurer may be limited to its United States business:  
57 *Provided*, That in lieu of an examination under this  
58 section of any foreign or alien insurer licensed in this  
59 state, the commissioner may accept an examination  
60 report on the company as prepared by the insurance  
61 department for the company's state of domicile or port-  
62 of-entry state until the first day of January, one  
63 thousand nine hundred ninety-four. Thereafter, such  
64 reports may only be accepted if:

65 (1) The insurance department was at the time of the  
66 examination accredited under the national association of  
67 insurance commissioners' financial regulation standards  
68 and accreditation program; or

69 (2) The examination is performed under the supervi-  
70 sion of an accredited insurance department or with the  
71 participation of one or more examiners who are  
72 employed by such an accredited state insurance depart-  
73 ment and who, after a review of the examination work  
74 papers and report, state under oath that the examina-  
75 tion was performed in a manner consistent with the  
76 standards and procedures required by their insurance  
77 department.

78 (e) In scheduling and determining the nature, scope  
79 and frequency of examinations conducted pursuant to  
80 this section, the commissioner may consider such  
81 matters as the results of financial statement analyses  
82 and ratios, changes in management or ownership,  
83 actuarial opinions, reports of independent certified  
84 public accountants and other criteria as set forth in the  
85 examiners' handbook adopted by the national association  
86 of insurance commissioners and in effect when the  
87 commissioner exercises discretion under this section.

88 (f) For purposes of completing an examination of any  
89 company under this section, the commissioner may  
90 examine or investigate any person, or the business of  
91 any person, insofar as the examination or investigation  
92 is, in the sole discretion of the commissioner, necessary  
93 or material to the examination of the company.

94 (g) The commissioner may also cause to be examined  
95 at such times as he or she deems necessary the books,  
96 records, papers, documents, correspondence and meth-  
97 ods of doing business of any agent, broker, excess lines  
98 broker or solicitor licensed by this state. For these  
99 purposes the commissioner or his examiners shall have  
100 free access to all books, records, papers, documents and  
101 correspondence of all the agents, brokers, excess lines  
102 brokers and solicitors wherever the books, records,  
103 papers, documents and records are situate. The commis-  
104 sioner may revoke the license of any agent, broker,  
105 excess lines broker or solicitor who refuses to submit to  
106 such examination;

107 (h) In addition to conducting an examination, the  
108 commissioner or his examiners may, as the commis-

109 sioner deems necessary, analyze or review any phase of  
110 the operations or methods of doing business of an  
111 insurer, agent, broker, excess lines broker, solicitor or  
112 other individual or corporation transacting or attempt-  
113 ing to transact an insurance business in the state of West  
114 Virginia. The commissioner may use the full resources  
115 provided by this section in carrying out these responsi-  
116 bilities, including any personnel and equipment pro-  
117 vided by this section as the commissioner deems  
118 necessary.

119 (i) Examinations made pursuant to this section shall  
120 be conducted in the following manner:

121 (1) Upon determining that an examination should be  
122 conducted, the commissioner or his designee shall issue  
123 an examination warrant appointing one or more  
124 examiners to perform the examination and instructing  
125 them as to the scope of the examination. In conducting  
126 the examination, the examiner shall observe those  
127 guidelines and procedures set forth in the examiners'  
128 handbook adopted by the national association of insu-  
129 rance commissioners. The commissioner may also  
130 employ any other guidelines or procedures as the  
131 commissioner may deem appropriate.

132 (2) Every company or person from whom information  
133 is sought, its officers, directors and agents shall provide  
134 to the examiners appointed under subdivision (1) timely,  
135 convenient and free access at all reasonable hours at its  
136 offices to all books, records, accounts, papers, documents  
137 and any or all computer or other recordings relating to  
138 the property, assets, business and affairs of the company  
139 being examined. The officers, directors, employees and  
140 agents of the company or person shall facilitate the  
141 examination and aid in the examination so far as it is  
142 in their power to do so.

143 (3) The refusal of any company, by its officers,  
144 directors, employees or agents, to submit to examination  
145 or to comply with any reasonable written request of the  
146 examiners shall be grounds for suspension, revocation,  
147 refusal or nonrenewal of any license or authority held  
148 by the company to engage in an insurance or other

149 business subject to the commissioner's jurisdiction. Any  
150 proceedings for suspension, revocation, refusal, or  
151 nonrenewal of any license or authority shall be con-  
152 ducted pursuant to section eleven, article two of this  
153 chapter.

154 (4) The commissioner or his examiners shall have the  
155 power to issue subpoenas, to administer oaths and to  
156 examine under oath any person as to any matter  
157 pertinent to the examination, analysis or review. The  
158 subpoenas shall be enforced pursuant to the provisions  
159 of section six, article two of this chapter.

160 (5) When making an examination, analysis or review  
161 under this section, the commissioner may retain  
162 attorneys, appraisers, independent actuaries, independ-  
163 ent certified public accountants or other professionals  
164 and specialists as examiners, the cost of which shall be  
165 borne by the company which is the subject of the  
166 examination, analysis or review.

167 (6) Nothing contained in this section may be construed  
168 to limit the commissioner's authority to terminate or  
169 suspend any examination, analysis or review in order to  
170 pursue other legal or regulatory action pursuant to the  
171 insurance laws of this state. The commissioner or his  
172 examiners may at any time testify and offer other  
173 proper evidence as to information secured during the  
174 course of an examination, analysis or review, whether  
175 or not a written report of the examination has at that  
176 time either been made, served or filed in the commis-  
177 sioner's office.

178 (7) Nothing contained in this section may be construed  
179 to limit the commissioner's authority to use and, if  
180 appropriate, to make public any final or preliminary  
181 examination report, any examiner or company workpap-  
182 ers or other documents or any other information  
183 discovered or developed during the course of any  
184 examination, analysis or review in the furtherance of  
185 any legal or regulatory action which the commissioner  
186 may, in his or her sole discretion, deem appropriate. An  
187 examination report, when filed, shall be admissible in  
188 evidence in any action or proceeding brought by the

189 commissioner against an insurance company, its officers  
190 or agents and shall be prima facie evidence of the facts  
191 stated therein.

192 (j) Examination reports prepared pursuant to the  
193 provisions of this section shall comply with the following  
194 requirements:

195 (1) All examination reports shall be comprised of only  
196 facts appearing upon the books, records or other  
197 documents of the company, its agents or other persons  
198 examined or as ascertained from the testimony of its  
199 officers or agents or other persons examined concerning  
200 its affairs and any conclusions and recommendations the  
201 examiners find reasonably warranted from the facts.

202 (2) No later than sixty days following completion of  
203 the examination, the examiner in charge shall file with  
204 the commissioner a verified written report of examina-  
205 tion under oath. Upon receipt of the verified report, the  
206 commissioner shall transmit the report to the company  
207 examined, together with a notice which shall afford the  
208 company examined a reasonable opportunity of not more  
209 than ten days to make a written submission or rebuttal  
210 with respect to any matters contained in the examina-  
211 tion report.

212 (3) Within thirty days of the end of the period allowed  
213 for the receipt of written submissions or rebuttals, the  
214 commissioner shall fully consider and review the report,  
215 together with any written submissions or rebuttals and  
216 any relevant portions of the examiner's workpapers and  
217 enter an order:

218 (A) Adopting the examination report as filed or with  
219 modification or corrections. If the examination report  
220 reveals that the company is operating in violation of any  
221 law, rule or prior order of the commissioner, the  
222 commissioner may order the company to take any action  
223 the commissioner considers necessary and appropriate  
224 to cure such violation; or

225 (B) Rejecting the examination report with directions  
226 to the examiners to reopen the examination for purposes  
227 of obtaining additional data, documentation or informa-

228 tion and refiling pursuant to subdivision (2) above; or

229 (C) Calling for an investigatory hearing with no less  
230 than twenty days notice to the company for purposes of  
231 obtaining additional documentation, data, information  
232 and testimony.

233 (4) All orders entered pursuant to this subsection shall  
234 be accompanied by findings and conclusions resulting  
235 from the commissioner's consideration and review of the  
236 examination report, relevant examiner workpapers and  
237 any written submissions or rebuttals. Any order issued  
238 pursuant to paragraph (A), subdivision three of this  
239 subsection shall be considered a final administrative  
240 decision and may be appealed pursuant to section  
241 fourteen, article two of this chapter and shall be served  
242 upon the company by certified mail, together with a  
243 copy of the adopted examination report. Within thirty  
244 days of the issuance of the adopted report, the company  
245 shall file affidavits executed by each of its directors  
246 stating under oath that they have received a copy of the  
247 adopted report and related orders.

248 (k) Hearings conducted pursuant to this section shall  
249 be subject to the following requirements:

250 (1) Any hearing conducted pursuant to this section by  
251 the commissioner or the commissioner's authorized  
252 representative shall be conducted as a nonadversarial  
253 confidential investigatory proceeding as necessary for  
254 the resolution of any inconsistencies, discrepancies or  
255 disputed issues apparent upon the face of the filed  
256 examination report or raised by or as a result of the  
257 commissioner's review of relevant workpapers or by the  
258 written submission or rebuttal of the company. Within  
259 twenty days of the conclusion of any such hearing, the  
260 commissioner shall enter an order pursuant to para-  
261 graph (A), subdivision (3) of this subsection.

262 (2) The commissioner may not appoint an examiner as  
263 an authorized representative to conduct the hearing.  
264 The hearing shall proceed expeditiously with discovery  
265 by the company limited to the examiner's workpapers  
266 which tend to substantiate any assertions set forth in  
267 any written submission or rebuttal. The commissioner

268 or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the commissioner, 271 the company or other persons. The documents produced 272 shall be included in the record and testimony taken by 273 the commissioner or the commissioner's representative 274 shall be under oath and preserved for the record. 275 Nothing contained in this section shall require the 276 commissioner to disclose any information or records 277 which would indicate or show the existence or content 278 of any investigation or activity of a criminal justice 279 agency. 280

281 (3) The hearing shall proceed with the commissioner 282 or the commissioner's representative posing questions to 283 the persons subpoenaed. Thereafter the company and 284 the department may present testimony relevant to the 285 investigation. Cross examination may be conducted only 286 by the commissioner or the commissioner's representative. 287 The company and the commissioner shall be 288 permitted to make closing statements and may be 289 represented by counsel of their choice.

290 (1) Adoption of the examination report shall be subject 291 to the following requirements:

292 (1) Upon the adoption of the examination report under 293 paragraph (A), subdivision (3) of this subsection, the 294 commissioner may continue to hold the content of the 295 examination report as private and confidential information 296 for a period of ninety days except to the extent 297 provided in subdivision (6), subsection (i) of this section. 298 Thereafter, the commissioner may open the report for 299 public inspection so long as no court of competent 300 jurisdiction has stayed its publication.

301 (2) Nothing contained in this section may prevent or 302 be construed as prohibiting the commissioner from 303 disclosing the content of an examination report, preliminary 304 examination report or results or any matter 305 relating thereto or the results of any analysis or review 306 to the insurance department of this or any other state 307 or country or to law enforcement officials of this or any

308 other state or agency of the federal government at any  
309 time, so long as the agency or office receiving the report  
310 or matters relating thereto agrees in writing to hold it  
311 confidential and in a manner consistent with this  
312 section.

313 (3) In the event the commissioner determines that  
314 regulatory action is appropriate as a result of any  
315 examination, analysis or review, he or she may initiate  
316 any proceedings or actions as provided by law.

317 (4) All working papers, recorded information, docu-  
318 ments and copies thereof produced by, obtained by or  
319 disclosed to the commissioner or any other person in the  
320 course of an examination, analysis or review made  
321 under this section must be given confidential treatment  
322 and are not subject to subpoena and may not be made  
323 public by the commissioner or any other person, except  
324 to the extent provided in subdivision (5) of this section.  
325 Access may also be granted to the national association  
326 of insurance commissioners. The parties must agree in  
327 writing prior to receiving the information to provide to  
328 it the same confidential treatment as required by this  
329 section, unless the prior written consent of the company  
330 to which it pertains has been obtained.

331 (m) No examiner may be appointed by the commis-  
332 sioner if the examiner, either directly or indirectly, has  
333 a conflict of interest or is affiliated with the manage-  
334 ment of or owns a pecuniary interest in any person  
335 subject to examination under this section. This section  
336 shall not be construed to automatically preclude an  
337 examiner from being:

338 (1) A policyholder or claimant under an insurance  
339 policy;

340 (2) A grantor of a mortgage or similar instrument on  
341 the examiner's residence to a regulated entity if done  
342 under customary terms and in the ordinary course of  
343 business;

344 (3) An investment owner in shares of regulated  
345 diversified investment companies; or

346 (4) A settlor or beneficiary of a "blind trust" into

347 which any otherwise impermissible holdings have been  
348 placed.

349 (5) Notwithstanding the requirements of this subsection,  
350 the commissioner may retain from time to time, on  
351 an individual basis, qualified actuaries, certified public  
352 accountants or other similar individuals who are  
353 independently practicing their professions, even though  
354 these persons may from time to time be similarly  
355 employed or retained by persons subject to examination  
356 under this section.

357 (n) Personnel conducting examinations, analyses or  
358 reviews of either a domestic, foreign or alien insurer  
359 shall be compensated for each day worked at a rate set  
360 by the commissioner. The personnel shall also be  
361 reimbursed for their travel and living expenses at the  
362 rate set by the commissioner. Other individuals who are  
363 not employees of the department of insurance shall all  
364 be compensated for their work, travel and living  
365 expenses at rates approved by the commissioner, or as  
366 otherwise provided by law. As used in this section the  
367 costs of an examination, analysis or review means:

368 (1) The entire compensation for each day worked by  
369 all personnel, including those who are not employees of  
370 the department of insurance, the conduct of such  
371 examination, analysis or review calculated as hereinbefore  
372 provided;

373 (2) Travel and living expenses of all personnel,  
374 including those who are not employees of the department  
375 of insurance, directly engaged in the conduct of  
376 the examination, analysis or review calculated at the  
377 rates as hereinbefore provided for;

378 (3) All other incidental expenses incurred by or on  
379 behalf of the personnel in the conduct of any authorized  
380 examination, analysis or review.

381 (o) All insurers subject to the provisions of this section  
382 of the code shall annually pay to the commissioner on  
383 or before the first day of July, one thousand nine  
384 hundred ninety-one and every first day of July thereafter  
385 an examination assessment fee of eight hundred

386 dollars. Four hundred fifty dollars of this fee shall be  
387 paid to the treasurer of the state to the credit of a special  
388 revolving fund to be known as the "Commissioner's  
389 Examination Revolving Fund" which is hereby estab-  
390 lished and three hundred fifty dollars shall be paid to  
391 the treasurer of the state. The commissioner may at his  
392 discretion, upon notice to the insurers subject to this  
393 section, increase this examination assessment fee or levy  
394 an additional examination assessment fee of two  
395 hundred fifty dollars. In no event may the total  
396 examination assessment fee including any additional  
397 examination assessment fee levied exceed one thousand  
398 five hundred dollars per insurer in any calendar year.

399 (p) The moneys collected by the commissioner from an  
400 increase or additional examination assessment fee shall  
401 be paid to the treasurer of the state to be credited to  
402 the "Commissioner's Examination Revolving Fund."  
403 Any funds expended or obligated by the commissioner  
404 from the "Commissioner's Examination Revolving  
405 Fund" may be expended or obligated solely for defray-  
406 ment of the costs of examinations, analyses or reviews  
407 of the financial affairs and business practices of  
408 insurance companies, agents, brokers, excess lines  
409 brokers, solicitors or other individuals or corporations  
410 transacting or attempting to transact an insurance  
411 business in this state made by the commissioner  
412 pursuant to this section or for the purchase of equipment  
413 and supplies, travel, education and training for the  
414 commissioner's deputies, other employees and appointed  
415 examiners necessary for the commissioner to fulfill the  
416 statutory obligations created by this section.

417 (q) The commissioner may require other individuals  
418 who are not employees of the department of insurance  
419 who have been appointed by the commissioner to  
420 conduct or participate in the examination, analysis or  
421 review of insurers, agents, brokers, excess lines brokers,  
422 solicitors or other individuals or corporations transact-  
423 ing or attempting to transact an insurance business in  
424 this state to:

425 (1) Bill and receive payments directly from the  
426 insurance company being examined, analyzed or re-

427 viewed for their work, travel and living expenses as  
428 previously provided for in this section; or

429 (2) If an individual agent, broker or solicitor is being  
430 examined, analyzed or reviewed, bill and receive  
431 payments directly from the "Commissioner's Examina-  
432 tion Revolving Fund" for their work, travel and living  
433 expenses as previously provided for in this section.

434 (r) The commissioner and his examiners shall be  
435 entitled to immunity to the following extent:

436 (1) No cause of action shall arise nor shall any liability  
437 be imposed against the commissioner or his examiners  
438 for any statements made or conduct performed in good  
439 faith while carrying out the provisions of this section.

440 (2) No cause of action shall arise, nor shall any  
441 liability be imposed against any person for the act of  
442 communicating or delivering information or data to the  
443 commissioner or his examiners pursuant to an exami-  
444 nation, analysis or review made under this section, if the  
445 act of communication or delivery was performed in good  
446 faith and without fraudulent intent or the intent to  
447 deceive.

448 (3) The commissioner or any examiner shall be  
449 entitled to an award of attorney's fees and costs if he  
450 or she is the prevailing party in a civil cause of action  
451 for libel, slander or any other relevant tort arising out  
452 of activities in carrying out the provisions of this section  
453 and the party bringing the action was not substantially  
454 justified in doing so. For purposes of this section a  
455 proceeding is "substantially justified" if it had a  
456 reasonable basis in law or fact at the time that it was  
457 initiated.

458 (4) This subsection does not abrogate or modify in any  
459 way any constitutional immunity or common law or  
460 statutory privilege or immunity heretofore enjoyed by  
461 any person identified in subdivision (1) of this section.

### ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

#### §33-3-1. License required.

1 (a) No person may act as an insurer and no insurer

2 may transact insurance in West Virginia except as  
3 authorized by a valid license issued by the commis-  
4 sioner, except as to such transactions as are expressly  
5 otherwise provided for in this chapter.

6 (b) No license may be required for an insurer,  
7 formerly holding a valid license, to enable it to inves-  
8 tigate and settle losses under its policies lawfully  
9 written in West Virginia while the license was in effect,  
10 or to liquidate such assets and liabilities of the insurer  
11 as may have resulted from its former authorized  
12 operations in West Virginia: *Provided*, That nothing  
13 herein allows an insurer to issue new policies or renew  
14 policies of insurance or collect premiums on those  
15 policies unless the insurer is authorized by a valid  
16 license issued by the commissioner, except as to the  
17 transactions that are otherwise provided for in this  
18 chapter.

19 (c) An insurer not transacting new insurance business  
20 in West Virginia but collecting premiums on and  
21 servicing of policies in force as to residents of or risks  
22 located in West Virginia, and where the policies were  
23 originally issued on nonresidents of or risks located  
24 outside of this state, is transacting insurance in West  
25 Virginia for the purpose of premium and annuity tax  
26 requirements but is not required to have a license  
27 therefor.

28 (d) A domestic insurer or a foreign insurer from  
29 offices or by personnel or facilities located in this state  
30 shall not solicit insurance applications or otherwise  
31 transact insurance in another state or country unless it  
32 holds a subsisting license granted to it by the commis-  
33 sioner authorizing it to transact the same kind or kinds  
34 of insurance in this state.

35 (e) Any officer, director, agent, representative or  
36 employee of any insurer who willfully authorizes,  
37 negotiates, makes or issues any insurance contract in  
38 violation of this section is guilty of a misdemeanor, and,  
39 upon conviction thereof, shall be fined not more than ten  
40 thousand dollars, or imprisoned in the county jail not  
41 more than one year, or both fined and imprisoned.

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

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

15 (b) The commissioner, may for the protection of the  
16 policyholders and the general public of this state,  
17 require an insurer to maintain funds in excess of the  
18 amounts required by subsection (a) of this section, due  
19 to the amount, kind or combination of kinds of insurance  
20 transacted by the insurer. Any additional amounts  
21 required shall be based upon all the kinds of insurance  
22 transacted by the insurer in all areas in which it  
23 operates or proposes to operate, whether or not only a  
24 portion of the kinds of insurance are to be transacted  
25 in this state. Failure of an insurer to maintain funds as  
26 ordered by the commissioner is grounds for suspension,  
27 revocation, refusal or nonrenewal of the insurer's  
28 license.

29 (c) An order issued pursuant to the provisions of this  
30 section is subject to review pursuant to applicable state  
31 administrative proceedings under article two of this  
32 chapter.

**ARTICLE 4. GENERAL PROVISIONS.****§33-4-15. Reinsurance.**

1 (a) For purposes of this section, an "assumption  
2 reinsurance agreement" means any contract which:

3 (1) Transfers insurance obligations and/or risks of  
4 existing or in-force contracts of insurance from a

5 transferring insurer to an assuming insurer; and

6 (2) Is intended to effect a novation of the transferred  
7 contract of insurance with the result that the assuming  
8 insurer becomes directly liable to the policyholders of  
9 the transferring insurer and the transferring insurer's  
10 insurance obligations and/or risks under the contracts  
11 are extinguished.

12 (b) An insurer shall reinsure its risks, or any part  
13 thereof, only in solvent insurers complying with the  
14 capital and surplus requirements of section five-b,  
15 article three of this chapter.

16 (c) Credit for reinsurance shall be governed by the  
17 provisions of sections fifteen-a and fifteen-b of this  
18 article. Credit shall not be allowed unless the reinsu-  
19 rance is payable by the assuming insurer on the basis  
20 of the liability of the ceding insurer under the contracts  
21 reinsured without diminution because of the insolvency  
22 of the ceding insurer nor unless under the reinsurance  
23 contract the liability for the reinsurance is assumed by  
24 the assuming insurer or insurers as of the same effective  
25 date.

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

29 (e) A licensed insurer may reinsure all or substantially  
30 all of its risks on property or lives located in West  
31 Virginia, or substantially all of a major class thereof,  
32 with another insurer by an assumption reinsurance  
33 agreement: *Provided*, That the assumption reinsurance  
34 agreement shall not become effective unless filed in  
35 advance with and approved in writing by the commis-  
36 sioner: *Provided, however*, That if a licensed insurer is  
37 deemed by the commissioner to be in hazardous  
38 financial condition, as defined in article thirty-four-a of  
39 this chapter, or an administrative or judicial proceeding  
40 has been instituted against it for the purpose of  
41 liquidating, reorganizing or conserving such insurer,  
42 and the transfer of the contracts of insurance is  
43 determined by the commissioner to be in the best  
44 interest of the policyholders, the commissioner may by

45 written order waive the advance filing and approval  
46 required by this section, which such waiver may include  
47 a form of implied consent and adequate notification to  
48 the policyholder of the circumstances requiring the  
49 transfer.

50 (f) The commissioner shall approve such agreement  
51 within one hundred twenty days after the filing of the  
52 same unless he or she finds that it is inequitable to the  
53 licensed insurer, its owners or its policyholders or would  
54 substantially reduce the protection or service to its  
55 policyholders. If the commissioner does not approve the  
56 agreement, he or she shall so notify the insurer in  
57 writing specifying his or her reasons therefor. If the  
58 commissioner does not disapprove the agreement within  
59 one hundred twenty days, the agreement shall be  
60 deemed approved.

61 (g) A filing may not be made pursuant to this section  
62 unless the reinsurance agreement is certified under oath  
63 by responsible officers of the reinsurer and the rein-  
64 sured to contain the entire agreement between the  
65 parties to the reinsurance agreement.

66 (h) The commissioner shall promulgate rules and  
67 regulations pursuant to chapter twenty-nine-a of this  
68 code for the implementation and administration of the  
69 provisions of this section to include, but not be limited  
70 to, the type of assumption agreements subject to the  
71 provisions of this section, their content and the stand-  
72 ards the commissioner may utilize in reviewing the  
73 agreements.

74 (i) Any insurer subject to this section is also subject  
75 to the provisions of article thirty-eight of this chapter.

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

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

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

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

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

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

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

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

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

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

44 grant extensions of time for filing of this annual  
45 statement upon application by the accredited reinsurer;  
46 and

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

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

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

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

71 (2) Credit shall be allowed when the reinsurance is  
72 ceded to an assuming insurer which is accredited as a  
73 reinsurer in this state prior to the effective date of the  
74 reinsurance contract.

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

83 provides evidence suitable to the commissioner that the  
84 assuming insurer:

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

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

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

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

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

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

120 (A) That in the event of the failure of the assuming  
121 insurer to perform its obligations under the terms of the

122 reinsurance agreement, the assuming insurer, at the  
123 request of the ceding insurer, shall submit to the  
124 jurisdiction of any court of competent jurisdiction in any  
125 state of the United States, shall comply with all  
126 requirements necessary to give such court jurisdiction,  
127 and shall abide by the final decision of such court or of  
128 any appellate court in the event of an appeal; and

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

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

145 (1) The assuming insurer shall report annually to the  
146 commissioner information substantially the same as that  
147 required to be reported on the national association of  
148 insurance commissioners annual statement form by  
149 licensed insurers to enable the commissioner to deter-  
150 mine the sufficiency of the trust fund. In the case of a  
151 single assuming insurer, the trust shall consist of a  
152 trustee account representing the assuming insurer's  
153 liabilities attributable to business written in the United  
154 States and, in addition, the assuming insurer shall  
155 maintain a trustee surplus of not less than twenty  
156 million dollars. In the case of a group of individual  
157 unincorporated underwriters, the trust shall consist of  
158 a trustee account representing the group's liabilities  
159 attributable to business written in the United States  
160 and, in addition, the group shall maintain a trustee  
161 surplus of which one hundred million dollars shall be  
162 held jointly for the benefit of United States ceding

163 insurers of any member of the group. The group shall  
164 make available to the commissioner an annual certifi-  
165 cation of the solvency of each underwriter by the group's  
166 domiciliary regulator and its independent public  
167 accountants.

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

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

204 reinsurance agreements subject to the trust.

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

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

229 (1) Cash;

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

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

244 acceptability, continue to be acceptable as security until  
245 their expiration, extension, renewal, modification or  
246 amendment, whichever first occurs.

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

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

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

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

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

265 (1) Is organized or, in the case of a United States  
266 branch or agency office of a foreign banking organiza-  
267 tion, licensed under the laws of the United States or any  
268 state thereof and has been granted authority to operate  
269 with fiduciary powers; and

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

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

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

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

1 Every corporation defined in section two of this article  
2 is hereby declared to be a scientific, nonprofit institution  
3 and exempt from the payment of all property and other  
4 taxes. Every corporation, to the same extent the  
5 provisions are applicable to insurers transacting similar  
6 kinds of insurance and not inconsistent with the  
7 provisions of this article, shall be governed by and be  
8 subject to the provisions as hereinbelow indicated, of the  
9 following articles of this chapter: Article two (insurance  
10 commissioner), except that, under section nine of said  
11 article, examinations shall be conducted at least once  
12 every four years; article four (general provisions), except  
13 that section sixteen of said article shall not be applicable  
14 thereto; article six, section thirty-four (fee for form and  
15 rate filing); article six-c (guaranteed loss ratio); article  
16 seven (assets and liabilities); article eleven (unfair trade  
17 practices); article twelve (agents, brokers and solicitors),  
18 except that the agent's license fee shall be five dollars;  
19 section fourteen, article fifteen (individual accident and  
20 sickness insurance); article fifteen-a (long-term care  
21 insurance); section three, article sixteen (required policy  
22 provisions); section three-a, article sixteen (mental  
23 illness); section three-c, article sixteen (group accident  
24 and sickness insurance); section three-d, article sixteen  
25 (medicare supplement insurance); section three-f, article  
26 sixteen (treatment of temporomandibular joint disorder  
27 and craniomandibular disorder); article sixteen-a (group  
28 health insurance conversion); article sixteen-c (small  
29 employer group policies); article sixteen-d (marketing  
30 and rate practices for small employers); article twenty-  
31 six-a (West Virginia life and health insurance guaranty  
32 association act), after the first day of October, one  
33 thousand nine hundred ninety-one; article twenty-seven  
34 (insurance holding company systems); article twenty-  
35 eight (individual accident and sickness insurance  
36 minimum standards); article thirty-three (annual  
37 audited financial report); article thirty-four (administra-  
38 tive supervision); article thirty-four-a (standards and  
39 commissioner's authority for companies deemed to be in  
40 hazardous financial condition); article thirty-five  
41 (criminal sanctions for failure to report impairment);  
42 and article thirty-seven (managing general agents); and

43 no other provision of this chapter may apply to these  
44 corporations unless specifically made applicable by the  
45 provisions of this article. If, however, the corporation is  
46 converted into a corporation organized for a pecuniary  
47 profit or if it transacts business without having obtained  
48 a license as required by section five of this article, it  
49 shall thereupon forfeit its right to these exemptions.

**ARTICLE 25. HEALTH CARE CORPORATIONS.**

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

1 Corporations organized under this article are subject  
2 to supervision and regulation of the insurance commis-  
3 sioner. The corporations organized under this article, to  
4 the same extent these provisions are applicable to  
5 insurers transacting similar kinds of insurance and not  
6 inconsistent with the provisions of this article, shall be  
7 governed by and be subject to the provisions as  
8 hereinbelow indicated, of the following articles of this  
9 chapter: Article four (general provisions), except that  
10 section sixteen of said article shall not be applicable  
11 thereto; article six-c (guaranteed loss ratio); article  
12 seven (assets and liabilities); article eight (investments);  
13 article ten (rehabilitation and liquidation); section  
14 fourteen, article fifteen (individual accident and sick-  
15 ness insurance); section three, article sixteen (required  
16 policy provisions); article sixteen-a (group health  
17 insurance conversion); article sixteen-c (small employer  
18 group policies); article sixteen-d (marketing and rate  
19 practices for small employers); article twenty-six-a  
20 (West Virginia life and health insurance guaranty  
21 association act); article twenty-seven (insurance holding  
22 company systems); article thirty-three (annual audited  
23 financial report); article thirty-four-a (standards and  
24 commissioner's authority for companies deemed to be in  
25 hazardous financial condition); article thirty-five  
26 (criminal sanctions for failure to report impairment);  
27 and article thirty-seven (managing general agents); and  
28 no other provision of this chapter may apply to these  
29 corporations unless specifically made applicable by the  
30 provisions of this article.

## ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

## §33-27-2. Definitions.

1 As used in this article:

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

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

10 (c) “Control” (including the terms “controlling,”  
11 “controlled by” and “under common control with”)  
12 means the possession, direct or indirect, of the power to  
13 direct or cause the direction of the management and  
14 policies of a person, whether through the ownership of  
15 voting securities, by contract other than a commercial  
16 contract for goods or nonmanagement services, or  
17 otherwise, unless the power is the result of an official  
18 position with or corporate office held by the person.  
19 Control shall be presumed to exist if any person, directly  
20 or indirectly, owns, controls, holds with the power to  
21 vote, or holds proxies representing ten percent or more  
22 of the voting securities of any other person or controls  
23 or appoints a majority of the board of directors, voting  
24 members or similar governing body of any other person.  
25 This presumption may be rebutted by a showing made  
26 in the manner provided by subsection (l) , section four  
27 of this article that control does not exist in fact. The  
28 commissioner may determine, after furnishing all  
29 persons in interest notice and opportunity to be heard  
30 and making specific findings of fact to support the  
31 determination, that control exists in fact, notwithstand-  
32 ing the absence of a presumption to that effect.

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

36 (e) “Insurer” means any person or persons or corpo-  
37 ration, partnership or company authorized by the laws

38 of this state to transact the business of insurance in this  
39 state, except that it shall not include agencies, author-  
40 ities or instrumentalities of the United States, its  
41 possessions and territories, the commonwealth of Puerto  
42 Rico, the District of Columbia, or a state or political  
43 subdivision of a state.

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

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

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

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

#### §33-27-14. Regulatory authority.

1 The insurance commissioner shall promulgate rules  
2 pursuant to the provisions of chapter twenty-nine-a of  
3 this code setting forth procedural requirements neces-  
4 sary to implement the provisions of this article and  
5 specifying the reporting forms required by this article  
6 prior to the first day of August, one thousand nine  
7 hundred and ninety-three.

#### ARTICLE 31. CAPTIVE INSURANCE.

##### §33-31-11. Reinsurance.

1 A captive insurance company may procure reinsur-  
2 ance or issue policies of reinsurance to other licensed  
3 insurers transacting like kinds of insurance, pursuant to

4 the provisions of section fifteen, article four of this  
5 chapter.

ARTICLE 32. RISK RETENTION ACT.

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

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

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

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

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

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

31 (4) A risk retention group that has been chartered and  
32 operating in any state and has previously filed an annual  
33 financial statement as required by this section with its

34 state of domicile, must submit a copy of the most recent  
35 annual statement with the registration form required by  
36 this subsection.

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

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

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

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

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

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

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

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

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

1 (a) A purchasing group which intends to do business

2 in this state shall, prior to doing business, furnish notice  
3 to the commissioner, on forms prescribed by the national  
4 association of insurance commissioners, which such  
5 forms shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

61 (3) Determine appropriate tax treatment.

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

### ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

#### §33-33-1. Declaration of policy and purpose.

1 (a) The purpose of this article is to improve the  
2 insurance commissioner's surveillance of the financial  
3 condition of insurers by requiring an annual examina-  
4 tion by independent certified public accountants of the  
5 financial statements reporting the financial condition  
6 and the results of operations of insurers.

7 (b) Foreign or alien insurers filing audited financial

8 reports in another state, pursuant to the other state's  
9 requirement of audited financial reports which has been  
10 found by the commissioner to be substantially similar  
11 to the requirements herein, are exempt from this article  
12 if:

13 (1) A copy of the audited financial report, report on  
14 significant deficiencies in internal controls, and the  
15 accountant's letter of qualifications which are filed with  
16 the other state are filed with the commissioner in  
17 accordance with the filing dates specified in sections  
18 three, ten and ten-a, respectively. Canadian insurers  
19 may submit accountants' reports as filed with the  
20 Canadian Dominion Department of Insurance.

21 (2) A copy of any notification of adverse financial  
22 condition report filed with the other state is filed with  
23 the commissioner within the time specified in section  
24 nine.

25 (c) This article shall not prohibit or preclude or in any  
26 way limit the commissioner from performing examina-  
27 tions of insurers as specified in section nine, article two  
28 of this chapter or such any other examinations as the  
29 commissioner may be authorized to perform by this  
30 chapter.

### §33-33-2. Definitions.

1 (a) "Accountant," and "independent certified public  
2 accountant means an independent certified public  
3 accountant or accounting firm in good standing with the  
4 American institute of certified public accountants and  
5 in all states in which they are licensed to practice; for  
6 Canadian and British companies, it means a Canadian-  
7 chartered or British-chartered accountant.

8 (b) "Annual statement" means the annual financial  
9 statement required to be filed by insurers with the  
10 commissioner pursuant to the provisions of this chapter.

11 (c) "Audited financial report" means and includes  
12 those items specified in section four of this article.

13 (d) "Insurer" for purposes of this article means any  
14 domestic insurer as defined in section six, article one of

15 this chapter, and includes any domestic stock insurance  
16 company, mutual insurance company, reciprocal insu-  
17 rance company, farmers' mutual fire insurance com-  
18 pany, fraternal benefit society, hospital service corpora-  
19 tion, medical service corporation, health care corpora-  
20 tion, health maintenance organization, captive insurance  
21 company or risk retention group and any licensed  
22 foreign or alien insurer defined in article one of this  
23 chapter.

**§33-33-3. Filing and extensions for filing of annual audited financial reports.**

1 (a) Annual audited financial reports must be filed by  
2 all insurers with the commissioner on or before the first  
3 day of June for the year ending the thirty-first day of  
4 December immediately preceding. The commissioner  
5 may require an insurer to file an audited financial  
6 report earlier than June 1 with ninety (90) days advance  
7 notice to the insurer.

8 (b) Extensions of the filing date on the first day of  
9 June may be granted by the commissioner for thirty day  
10 periods upon showing by the insurer and its independent  
11 certified public accountant the reasons for requesting  
12 the extension and determination by the commissioner of  
13 good cause for an extension. A request for extension  
14 must be submitted in writing not less than ten days  
15 prior to the due date in sufficient detail to permit the  
16 commissioner to make an informed decision with respect  
17 to the requested extension.

**§33-33-4. Contents of annual audited financial report.**

1 (a) The annual audited financial report shall report  
2 the financial condition of the insurer as of the end of the  
3 most recent calendar year and the results of its  
4 operations, cash flows and changes in capital and  
5 surplus for the year then ended in conformity with  
6 statutory accounting practices for preparation of the  
7 annual statement or as otherwise permitted, by the  
8 commissioner.

9 (b) The annual audited financial report shall include  
10 the following:

- 11 (1) Report of independent certified public accountant;  
12 (2) Balance sheet reporting admitted assets, liabilities,  
13 capital and surplus;
- 14 (3) Statement of gain or loss from operations or  
15 statement of revenue and expenses;
- 16 (4) Statement of cash flows statement;
- 17 (5) Statement of changes in capital and surplus;
- 18 (6) Notes to financial statements. These notes shall be  
19 those required by the appropriate national association of  
20 insurance commissioners annual statement instructions  
21 and any other notes required by generally accepted  
22 accounting principles and shall also include:
- 23 (A) A reconciliation of differences, if any, between the  
24 audited statutory financial statements and the annual  
25 statement with a written description of the nature of  
26 these differences;
- 27 (B) A summary of ownership and relationships of the  
28 insurer and all affiliated companies.
- 29 (7) The financial statements included in the audited  
30 financial report shall be prepared in a form and using  
31 language and groupings substantially the same as the  
32 relevant sections of the annual statement of the insurer  
33 filed with the commissioner; and:
- 34 (A) The financial statement shall be comparative,  
35 presenting the amounts as of the thirty-first day of  
36 December of the current year and the amounts as of the  
37 immediately preceding thirty-first day of December:  
38 *Provided*, That in the first year in which an insurer is  
39 required to file an audited financial report, the compar-  
40 ative data may be omitted.
- 41 (B) Amounts may be rounded to the nearest thousand  
42 dollars;
- 43 (8) Supplementary data and information. This shall  
44 include any additional clarifying information or data  
45 which the commissioner may require to be disclosed.

**§33-33-5. Designation of independent certified public  
accountant.**

1 (a) Each insurer required by this article to file an  
2 annual audited financial report must, within sixty days  
3 after becoming subject to such these requirements,  
4 register with the commissioner in writing the name and  
5 address of the certified public accountant or accounting  
6 firm (generally referred to in this article as the  
7 "accountant") retained to conduct the annual audit set  
8 forth in this article.

9 (b) The insurer shall obtain a letter from the accoun-  
10 tant, and file a copy with the commissioner stating that  
11 the accountant is aware of the provisions of this code and  
12 rules that relate to accounting and financial matters and  
13 affirming that he or she will express his or her opinion  
14 on the financial statements in terms of their conformity  
15 to the statutory accounting practices prescribed or  
16 otherwise permitted by the commissioner specifying any  
17 exceptions as he may believe appropriate.

18 (c) If an accountant who was not the accountant for  
19 the immediately preceding filed audited financial  
20 report, is engaged to audit the insurer's financial  
21 statements, the insurer shall within thirty days of the  
22 date the accountant is engaged notify the commissioner  
23 of this event.

24 (d) If an accountant who was the accountant for the  
25 immediately preceding filed audited financial report is  
26 dismissed or resigns the insurer shall within five  
27 business days notify the commissioner of this event. The  
28 insurer shall also furnish the commissioner with a  
29 separate letter within ten business days of the above  
30 notification stating whether in the twenty-four months  
31 preceding the notification there were any disagreements  
32 with the former accountant on any matter of accounting  
33 principles or practices, financial statement disclosure,  
34 or auditing scope or procedure, which disagreements, if  
35 not resolved to the satisfaction of the former accountant,  
36 would have caused him or her to make reference to the  
37 subject matter of the disagreement in connection with  
38 his or her opinion. The disagreements required to be  
39 reported in response to this section include both those  
40 resolved to the former accountant's satisfaction and  
41 those not resolved to the former accountant's satisfac-

42 tion. Disagreements contemplated by this section are  
43 those that occur at the decision-making level between  
44 personnel of the insurer responsible for presentation of  
45 its financial statements and personnel of the accounting  
46 firm responsible for rendering its report. The insurer  
47 shall also in writing request the former accountant to  
48 furnish it a letter addressed to the insurer stating  
49 whether the accountant agrees with the statements  
50 contained in the insurer's letter and, if not, stating the  
51 reasons for which he does not agree; and the insurer  
52 shall furnish the responsive letter from the former  
53 accountant to the commissioner together with its own.

**§33-33-6. Qualifications of independent certified public accountants.**

1 (a) The commissioner shall not recognize any person  
2 or firm as a qualified independent certified public  
3 accountant that is not in good standing with the  
4 American institute of certified public accountants and  
5 in all states in which the accountant is licensed to  
6 practice, or, for a Canadian or British company, that is  
7 not a chartered accountant.

8 (b) Except as otherwise provided herein, an independ-  
9 ent certified public accountant shall be recognized as  
10 qualified as long as he or she conforms to the standards  
11 of his or her profession, as contained in the code of  
12 professional ethics of the American institute of certified  
13 public accountants and the rules and regulations and  
14 code of ethics and rules of professional conduct of the  
15 West Virginia board of accountancy.

16 (c) No partner or other person responsible for  
17 rendering a report may act in that capacity for more  
18 than seven consecutive years. Following any period of  
19 service the person shall be disqualified from acting in  
20 that or a similar capacity for the same company or its  
21 insurance subsidiaries or affiliates for a period of two  
22 years. An insurer may make application to the commis-  
23 sioner for relief from the above rotation requirement on  
24 the basis of unusual circumstances. The commissioner  
25 may consider the following factors in determining if the  
26 relief should be granted:

27 (1) Number of partners, expertise of the partners or  
28 the number of insurance clients in the currently  
29 registered firm;

30 (2) Premium volume of the insurer; or

31 (3) Number of jurisdictions in which the insurer  
32 transacts business: *Provided*, That the requirements of  
33 this subsection shall become effective two years after the  
34 enactment of this article.

35 (d) The commissioner shall not recognize as a quali-  
36 fied independent certified public accountant, nor accept  
37 any annual audited financial report, prepared in whole  
38 or in part by, any natural person who:

39 (1) Has been convicted of fraud, bribery, a violation  
40 of the Racketeer Influenced and Corrupt Organizations  
41 Act, 18 U.S.C. Sections 1961-1968, or any dishonest  
42 conduct or practices under federal or state law;

43 (2) Has been found to have violated the insurance laws  
44 of this state with respect to any previous reports  
45 submitted under this article; or

46 (3) Has demonstrated a pattern or practice of failing  
47 to detect or disclose material information in previous  
48 reports filed under the provisions of this article.

49 (e) The commissioner may hold a hearing to determine  
50 whether a certified public accountant is qualified and  
51 considering the evidence presented, may rule that the  
52 accountant is not qualified for purposes of expressing an  
53 opinion on the financial statements in the audited  
54 financial report made pursuant to this article and  
55 require the insurer to replace the accountant with  
56 another whose relationship with the insurer is qualified  
57 within the meaning of this article.

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

1 (a) An insurer may make written application to the  
2 commissioner for approval to file audited consolidated  
3 or combined financial statements in lieu of separate  
4 annual audited financial statements if the insurer is  
5 part of a group of insurance companies which utilizes  
6 a pooling or one hundred percent reinsurance agree-

7 ment that affects the solvency and integrity of the  
8 insurer's reserves and the insurer cedes all of its direct  
9 and assumed business to the pool. If an approval is  
10 granted, a columnar consolidating or combining work-  
11 sheet shall be filed with the report incorporating the  
12 following:

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

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

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

20 (4) Explanations of consolidating and eliminating  
21 entries shall be included; and

22 (5) A reconciliation shall be included of any differen-  
23 ces between the amounts shown in the individual insurer  
24 columns of the worksheet and comparable amounts  
25 shown on the annual statements of the insurers.

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

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

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

**§33-33-9. Notification of adverse financial condition.**

1 (a) The independent certified public accountant shall  
2 immediately notify, in writing, an officer or director of  
3 the insurer and the commissioner of any determination  
4 by the independent certified public accountant that the  
5 insurer has materially misstated its financial condition  
6 as reported to the commissioner as of the thirty-first day  
7 of December immediately preceding, or of any determi-  
8 nation that the insurer does not meet the applicable  
9 minimum capital and surplus requirement of this  
10 chapter or in the case of an insurer not subject to capital  
11 and surplus requirement, that the surplus of the insurer  
12 is less than one hundred thousand dollars as of the  
13 thirty-first day of December immediately preceding.  
14 For purposes of this article material misstatement shall  
15 have the meaning prescribed by the professional  
16 standards and pronouncements of the American insti-  
17 tute of certified public accountants: *Provided*, That the  
18 independent certified public accountant shall report a  
19 misstatement that overstates the surplus as regards  
20 policyholders in single financial statement items by five  
21 percent or more, or when taken together with all  
22 financial statement items, the surplus as regards  
23 policyholders is overstated by ten percent or more.

24 (b) No independent public accountant shall be liable  
25 in any manner to any person for any statement made  
26 in connection with the above paragraph if the statement  
27 is made in good faith in compliance with the above  
28 paragraph.

29 (c) If the accountant, subsequent to the date of the  
30 audited financial report filed pursuant to this article,  
31 becomes aware of facts which might have affected the  
32 report, the commissioner notes the obligation of the  
33 accountant to take action as prescribed in Volume 1,  
34 Section AU 561 of the professional standards of the  
35 American institute of certified public accountants.

**§33-33-10. Evaluation of accounting procedures and  
system of internal control.**

1 (a) In addition to the annual audited financial reports,  
2 each insurer shall furnish the commissioner with a  
3 written report prepared by the accountant describing

4 significant deficiencies in the insurer's internal control,  
5 structure noted by the accountant during the audit.  
6 Statement on auditing standards (SAS) No. 60, "Com-  
7 munication of Internal Control Structure Matters Noted  
8 in an Audit", AU Section 325 of the professional  
9 standards of the American institute of certified public  
10 accountants, requires an accountant to communicate  
11 significant deficiencies, known as "reportable condi-  
12 tions", noted during a financial statement audit to the  
13 appropriate parties within an entity. No report should  
14 be issued if the accountant does not identify significant  
15 deficiencies.

16 (b) If significant deficiencies are noted, the written  
17 report shall be filed annually by the insurer with the  
18 commissioner within sixty days after the filing of the  
19 annual audited financial reports. The insurer is re-  
20 quired to provide a description of remedial actions taken  
21 or proposed to correct significant deficiencies, if the  
22 actions are not described in the accountant's report.

### **§33-33-10a. Accountant's Letter of Qualifications.**

1 (a) The accountant shall furnish the insurer in  
2 connection with, and for inclusion in, the filing of the  
3 annual audited financial report, a letter stating:

4 (1) That the accountant is independent with respect to  
5 the insurer and conforms to the standards of his or her  
6 profession as contained in the code of professional ethics  
7 and pronouncements of the American institute of  
8 certified public accountants and the rules of professional  
9 conduct of the West Virginia board of accountancy.

10 (2) The background and experience in general, and  
11 the experience in audits of insurers of the staff assigned  
12 to the engagement and whether each is an independent  
13 certified public accountant. Nothing within this article  
14 shall be construed as prohibiting the accountant from  
15 utilizing staff as he or she deems appropriate where use  
16 is consistent with the standards prescribed by generally  
17 accepted auditing standards.

18 (3) That the accountant understands the annual  
19 audited financial report and the opinion thereon will be

20 filed in compliance with this article and that the  
21 commissioner will be relying on this information in the  
22 monitoring and regulation of the financial position of  
23 insurers.

24 (4) That the accountant consents to the requirements  
25 of section eleven of this article and that the accountant  
26 consents and agrees to make available for review by the  
27 commissioner, or the commissioner's designee or ap-  
28 pointed agent, the workpapers, as defined in section  
29 eleven.

30 (5) A representation that the accountant is properly  
31 licensed by the West Virginia board of accountancy and  
32 is a member in good standing in the American institute  
33 of certified public accountants.

34 (6) A representation that the accountant is in com-  
35 pliance with the requirements of section six of this  
36 article.

**§33-33-11. Definition, availability and maintenance of  
certified public accountant (CPA) work-  
papers.**

1 (a) Workpapers shall be kept by the independent  
2 certified public accountant of the procedures followed,  
3 the tests performed, the information obtained and the  
4 conclusions reached pertinent to the examination of the  
5 financial statements of an insurer. Workpapers shall  
6 include audit planning documentation, work programs,  
7 analyses, memoranda, letters of confirmation and  
8 representation, abstracts of company documents and  
9 schedules or commentaries prepared or obtained by the  
10 independent certified public accountant in the course of  
11 the examination of the financial statements of an insurer  
12 and which support the opinion thereon.

13 (b) Every insurer required to file an audited financial  
14 report pursuant to this article, shall require the  
15 accountant to make available for review by the commis-  
16 sioner the workpapers prepared in the conduct of the  
17 examination. The insurer shall require that the accoun-  
18 tant retain the audit workpapers and any communica-  
19 tions related to the audit between the accountant and the

20 insurer, at the offices of the insurer, at the insurance  
21 department or at any other reasonable place designated  
22 by the commissioner. The insurer shall require that the  
23 accountant retain the audit workpapers and communi-  
24 cations until the commissioner has filed a report of  
25 examination, as required by section nine, article two of  
26 this chapter, covering the period of the audit but no  
27 longer than seven years from the date of the audit  
28 report.

29 (c) In the conduct of the aforementioned periodic  
30 review by the commissioner, it shall be agreed that  
31 photocopies of pertinent audit workpapers may be made  
32 and retained by the commissioner. Reviews by the  
33 commissioner shall be considered investigations and all  
34 workpapers and communications obtained during the  
35 course of any investigations shall be afforded the same  
36 confidentiality as other examination workpapers gener-  
37 ated by the commissioner.

### §33-33-13. Exemptions from compliance.

1 (a) Upon written application by an insurer, the  
2 commissioner may grant an exemption from compliance  
3 with this article if the commissioner finds, upon review  
4 of the application, that compliance with this article  
5 would constitute a financial or organizational hardship  
6 upon the insurer. An exemption may be granted at any  
7 time and from time to time for a specified period or  
8 periods. Within ten days of a denial of an insurer's  
9 written request for an exemption from this article, the  
10 insurer may request in writing a hearing on its  
11 application for an exemption.

12 (b) Foreign insurers shall comply with this article for  
13 the year ending the thirty-first day of December one  
14 thousand nine hundred and ninety-three and each year  
15 thereafter, unless the commissioner permits otherwise.

### §33-33-14. Canadian and British Companies.

1 (a) In the case of Canadian and British insurers, the  
2 annual audited financial report shall be defined as the  
3 annual statement of total business on the form filed by  
4 the companies with their domiciliary supervision

5 authority duly audited by an independent chartered  
6 accountant.

7 (b) For these insurers, the letter required in section  
8 five shall state that the accountant is aware of the  
9 requirements relating to the annual audited statement  
10 filed with the commissioner pursuant to section three  
11 and shall affirm that the opinion expressed is in  
12 conformity with those requirements.

**§33-33-15. Severability.**

1 If any section or portion of a section of this article or  
2 the applicability thereof to any person or circumstance  
3 is held invalid by a court, the remainder of the article  
4 or the applicability of the provision to other persons or  
5 circumstances shall not be affected thereby.

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

**§33-34A-4. Commissioner's authority.**

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

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

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

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

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

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

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

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

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

32 (4) Increase the insurer's capital and surplus;

33 (5) Suspend or limit the declaration and payment of  
34 dividend by an insurer to its stockholders or to its  
35 policyholders;

36 (6) File reports in a form acceptable to the commis-  
37 sioner concerning the market value of an insurer's  
38 assets;

39 (7) Limit or withdraw from certain investments or  
40 discontinue certain investment practices to the extent  
41 the commissioner deems necessary;

42 (8) Document the adequacy of premium rates in  
43 relation to the risks insured; or

44 (9) File, in addition to regular annual statements,  
45 interim financial reports on the form adopted by the  
46 national association of insurance commissioners or on  
47 such format as promulgated by the commissioner. If the  
48 insurer is a foreign insurer the commissioner's order  
49 may be limited to the extent provided by statute.

50 (c) An order issued pursuant to the provisions of this  
51 article is subject to review pursuant to applicable state  
52 administrative proceedings under article two of this  
53 chapter: *Provided*, That all hearings pursuant to this  
54 section shall be held privately, unless the insurer  
55 requests a public hearing, in which case the hearing  
56 shall be public.

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

**§33-36-1. Short title.**

1 This article may be cited as the "Business Transacted  
2 with Producer Controlled Insurer Act."

**§33-36-2. Definitions.**

1 As used in this article:

2 (a) "Accredited state" means a state in which the  
3 insurance department or regulatory agency has qualified as meeting the minimum financial regulatory  
4 standards promulgated and established from time to  
5 time by the national association of insurance  
6 commissioners.  
7

8 (b) "Control" or "controlled" means the possession,  
9 direct or indirect, of the power to direct or cause the  
10 direction of the management and policies of a person,  
11 whether through the ownership of voting securities, by  
12 contract other than a commercial contract for goods or  
13 nonmanagement services, or otherwise, unless the power  
14 is the result of an official position with or corporate  
15 office held by the person. Control shall be presumed to  
16 exist if any person, directly or indirectly, owns, controls,  
17 holds with the power to vote, or holds proxies representing  
18 ten percent or more of the voting securities of any  
19 other person or controls or appoints a majority of the  
20 board of directors, voting members or similar governing  
21 body of any other person. This presumption may be  
22 rebutted by a showing made in the manner provided by  
23 subsection (l), section four, article twenty-seven of this  
24 chapter that control does not exist in fact. The commissioner  
25 may determine, after furnishing all persons in  
26 interest notice and opportunity to be heard and making  
27 specific findings of fact to support the determination,  
28 that control exists in fact, notwithstanding the absence  
29 of a presumption to that effect.

30 (c) "Controlled insurer" means a licensed insurer  
31 which is controlled, directly or indirectly, by a producer.

32 (d) "Controlling producer" means a producer who,

33 directly or indirectly, controls an insurer.

34 (e) "Licensed insurer" or "insurer" means any person,  
35 firm, association or corporation duly licensed to transact  
36 a property or casualty insurance business, or both  
37 property and casualty insurance, in this state: *Provided*,  
38 That the following are not licensed insurers for the  
39 purposes of this article:

40 (1) All risk retention groups as defined in article  
41 thirty-two of this chapter;

42 (2) All residual market pools and joint underwriting  
43 authorities or associations; and

44 (3) All captive insurance companies as defined in  
45 article thirty-one of this chapter.

46 (f) "Producer" means an insurance broker or brokers  
47 or any other person, firm, association or corporation,  
48 when, for any compensation, commission or other thing  
49 of value, the person, firm, association or corporation acts  
50 or aids in any manner in soliciting, negotiating or  
51 procuring the making of any insurance contract on  
52 behalf of an insured other than the person, firm,  
53 association or corporation: *Provided*, That the designa-  
54 tion of any individual or entity as a producer does not  
55 expand upon or provide for activities beyond those  
56 permitted by article twelve of this chapter.

### §33-36-3. Applicability.

1 This article applies to licensed insurers as defined in  
2 section two of this article, either domiciled in this state  
3 or domiciled in a state that does not have in effect a  
4 substantially similar law. All provisions of article  
5 twenty-seven of this chapter, to the extent they are not  
6 superseded by this article, shall continue to apply to all  
7 parties within holding company systems subject to this  
8 article.

### §33-36-4. Minimum standards.

1 (a) The provisions of this section apply if, in any  
2 calendar year, the aggregate amount of gross written  
3 premium on business placed with a controlled insurer  
4 by a controlling producer is equal to or greater than five

5 percent of the admitted assets of the controlled insurer,  
6 as reported in the controlled insurers' quarterly  
7 statement filed as of the thirtieth day of September of  
8 the prior year: *Provided*, That the provisions of this  
9 section shall do not apply if:

10 (1) The controlling producer:

11 (A) Places insurance only with the controlled insurer  
12 or only with the controlled insurer and a member or  
13 members of the controlled insurer's holding company  
14 system or the controlled insurer's parent, affiliate or  
15 subsidiary and receives no compensation based upon the  
16 amount of premiums written in connection with such  
17 insurance; and

18 (B) Accepts insurance placements only from nonaffil-  
19 iated subproducers, and not directly from insureds; and

20 (2) The controlled insurer accepts insurance business  
21 only from a controlling producer, a producer controlled  
22 by the controlled insurer, or a producer that is a  
23 subsidiary of the controlled insurer: *Provided*, That the  
24 provisions of this subdivision do not apply to insurance  
25 business written through a residual market facility such  
26 as the "West Virginia Essential Property Insurance  
27 Association" or the "West Virginia Automobile Insu-  
28 rance Plan."

29 (b) A controlled insurer may not accept business from  
30 a controlling producer and a controlling producer may  
31 not place business with a controlled insurer unless there  
32 is a written contract between the controlling producer  
33 and the insurer specifying the responsibilities of each  
34 party, which contract has been approved by the board  
35 of directors of the insurer and contains the following  
36 minimum provisions:

37 (1) The controlled insurer may terminate the contract  
38 for cause, upon written notice to the controlling  
39 producer. The controlled insurer shall suspend the  
40 authority of the controlling producer to write business  
41 during the pendency of any dispute regarding the cause  
42 for the termination;

43 (2) The controlling producer shall render accounts to

44 the controlled insurer detailing all material transac-  
45 tions, including information necessary to support all  
46 commissions, charges and other fees received by, or  
47 owing to, the controlling producer;

48 (3) The controlling producer shall remit all funds due  
49 under the terms of the contract to the controlled insurer  
50 on at least a monthly basis. The due date shall be fixed  
51 so that premiums or installments thereof collected shall  
52 be remitted no later than ninety days after the effective  
53 date of any policy placed with the controlled insurer  
54 under this contract;

55 (4) All funds collected for the controlled insurer's  
56 account shall be held by the controlling producer in a  
57 fiduciary capacity, in one or more appropriately  
58 identified bank accounts in banks that are members of  
59 the federal reserve system, in accordance with the  
60 applicable provisions of this chapter. However, funds of  
61 a controlling producer not required to be licensed in this  
62 state shall be maintained in compliance with the  
63 requirements of the controlling producer's domiciliary  
64 jurisdiction;

65 (5) The controlling producer shall maintain separately  
66 identifiable records of business written for the con-  
67 trolled insurer;

68 (6) The contract may not be assigned in whole or in  
69 part by the controlling producer;

70 (7) The controlled insurer shall provide the controlling  
71 producer with its underwriting standards, rules and  
72 procedures manuals setting forth the rates to be charged  
73 and the conditions for the acceptance or rejection of  
74 risks. The controlling producer shall adhere to the  
75 standards, rules, procedures, rates and conditions. The  
76 standards, rules, procedures, rates and conditions shall  
77 be the same as those applicable to comparable business  
78 placed with the controlled insurer by a producer other  
79 than the controlling producer;

80 (8) The rates and terms of the controlling producer's  
81 commissions, charges or other fees and the purposes for  
82 those charges or fees. The rates of the commissions,

83 charges and other fees may be no greater than those  
84 applicable to comparable business placed with the  
85 controlled insurer by producers other than controlling  
86 producers. For purposes of this subdivision and subdivi-  
87 sion (7) of this subsection, examples of "comparable  
88 business" includes the same lines of insurance, same  
89 kinds of insurance, same kinds of risks, similar policy  
90 limits and similar quality of business;

91 (9) If the contract provides that the controlling  
92 producer, on insurance business placed with the insurer,  
93 is to be compensated contingent upon the insurer's  
94 profits on that business, then the compensation may not  
95 be determined and paid until at least five years after  
96 the premiums on liability insurance are earned and at  
97 least one year after the premiums are earned on any  
98 other insurance. In no event may the commissions be  
99 paid until the adequacy of the controlled insurer's  
100 reserves on remaining claims has been independently  
101 verified pursuant to subdivision (1), subsection (d) of this  
102 section;

103 (10) A limit on the controlling producer's writings in  
104 relation to the controlled insurer's surplus and total  
105 writings. The insurer may establish a different limit for  
106 each line or subline of business. The controlled insurer  
107 shall notify the controlling producer when the applica-  
108 ble limit is approached and shall not accept business  
109 from the controlling producer if the limit is reached.  
110 The controlling producer may not place business with  
111 the controlled insurer if it has been notified by the  
112 controlled insurer that the limit has been reached; and

113 (11) The controlling producer may negotiate but may  
114 not bind reinsurance on behalf of the controlled insurer  
115 on business the controlling producer places with the  
116 controlled insurer, except that the controlling producer  
117 may bind facultative reinsurance contracts pursuant to  
118 obligatory facultative agreements if the contract with  
119 the controlled insurer contains underwriting guidelines  
120 including, for both reinsurance assumed and ceded, a  
121 list of reinsurers with which the automatic agreements  
122 are in effect, the coverages and amounts or percentages  
123 that may be reinsured and commission schedules.

124 (c) Every controlled insurer shall have an audit  
125 committee of the board of directors composed of  
126 independent directors. The audit committee shall  
127 annually meet with management, the insurer's inde-  
128 pendent certified public accountants, and an independ-  
129 ent casualty actuary or other independent loss reserve  
130 specialist acceptable to the commissioner to review the  
131 adequacy of the insurer's loss reserves.

132 (d) In addition to any other required loss reserve  
133 certification, the controlled insurer shall annually, on  
134 the first day of April of each year, file with the  
135 commissioner the following:

136 (1) An opinion of an independent casualty actuary or  
137 any other independent loss reserve specialist acceptable  
138 to the commissioner, reporting loss ratios for each line  
139 of business written and attesting to the adequacy of loss  
140 reserves established for losses incurred and outstanding  
141 as of year-end, including incurred but not reported  
142 losses, on business placed by the producer; and

143 (2) A report and summary of the amount of commis-  
144 sions paid to the producer, the percentage such amount  
145 represents of the net premiums written and comparable  
146 amounts and percentage paid to noncontrolling produc-  
147 ers for placements of the same kinds of insurance.

#### §33-36-5. Disclosure.

1 The producer, prior to the effective date of the policy,  
2 shall deliver written notice to the prospective insured  
3 disclosing the relationship between the producer and the  
4 controlled insurer. If the business is placed through a  
5 subproducer who is not a controlling producer, the  
6 controlling producer shall retain in his records a signed  
7 commitment from the subproducer that the subproducer  
8 is aware of the relationship between the insurer and the  
9 producer and that the subproducer has or will notify the  
10 insured.

#### §33-36-6. Penalties.

1 (a) If the commissioner believes that the controlling  
2 producer or any other person has not materially  
3 complied with this article, or any rule or order promul-

4 gated hereunder, after notice and opportunity to be  
5 heard, the commissioner may order the controlling  
6 producer to cease placing business with the controlled  
7 insurer.

8 (b) If it is found that because of any material  
9 noncompliance that the controlled insurer or any  
10 policyholder thereof has suffered any loss or damage,  
11 the commissioner may maintain a civil action or  
12 intervene in an action brought by or on behalf of the  
13 insurer or policyholder for recovery of compensatory  
14 damages for the benefit of the insurer or policyholder  
15 or other appropriate relief.

16 (c) If an order for liquidation or rehabilitation of the  
17 controlled insurer has been entered pursuant to article  
18 ten of this chapter and the receiver appointed under that  
19 order believes that the controlling producer or any other  
20 person has not materially complied with this article or  
21 any rule or order promulgated hereunder, and the  
22 insurer suffered any loss or damage therefrom, the  
23 receiver may maintain a civil action for recovery of  
24 damages or other appropriate sanctions for the benefit  
25 of the insurer.

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

29 (e) Nothing contained in this section is intended to or  
30 may in any manner alter or affect the rights of  
31 policyholders, claimants, creditors or other third  
32 parties.

#### §33-36-7. Effective date.

1 Controlled insurers and controlling producers who are  
2 not in compliance with section four of this article on its  
3 effective date have sixty days to come into compliance.  
4 The controlled insurers and controlling producers have  
5 sixty days after the effective date of this article to  
6 comply with section five of this article.

### ARTICLE 38. REINSURANCE INTERMEDIARY ACT.

#### §33-38-1. Short title.

1 This article may be cited as the "Reinsurance Inter-  
2 mediary Act."

**§33-38-2. Definitions.**

1 As used in this article:

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

4 (b) "Controlling person" means any person, firm,  
5 association or corporation who directly or indirectly has  
6 the power to direct or cause to be directed, the  
7 management, control or activities of the reinsurance  
8 intermediary.

9 (c) "Commissioner" means the insurance commissioner  
10 of West Virginia.

11 (d) "Insurer" means any person, firm, association or  
12 corporation duly licensed in this state pursuant to the  
13 applicable provisions of this chapter as an insurer.

14 (e) "Licensed producer" means an agent or reinsu-  
15 rance intermediary licensed pursuant to the applicable  
16 provisions of this chapter.

17 (f) "Reinsurance intermediary" means a reinsurance  
18 intermediary-broker or a reinsurance intermediary-  
19 manager as these terms are defined in subdivisions (g)  
20 and (h) of this section.

21 (g) "Reinsurance intermediary-broker" means any  
22 person, other than an officer or employee of the ceding  
23 insurer, firm, association or corporation who solicits,  
24 negotiates or places reinsurance cessions or retroces-  
25 sions on behalf of a ceding insurer without the authority  
26 or power to bind reinsurance on behalf of such insurer.

27 (h) "Reinsurance intermediary-manager" means any  
28 person, firm, association or corporation who has  
29 authority to bind or manages all or part of the assumed  
30 reinsurance business of a reinsurer including the  
31 management of a separate division, department or  
32 underwriting office and acts as an agent for such  
33 reinsurer whether known as a reinsurance interme-  
34 diary-manager, manager or other similar term. Not-

35 withstanding the above, the following persons are not  
36 considered a reinsurance intermediary-manager, with  
37 respect to such reinsurer, for the purposes of this article:

38 (1) An employee of the reinsurer;

39 (2) A United States manager of the United States  
40 branch of an alien reinsurer;

41 (3) An underwriting manager who, pursuant to  
42 contract, manages all the reinsurance operations of the  
43 reinsurer, is under common control with the reinsurer,  
44 subject to article twenty-seven of this chapter, and  
45 whose compensation is not based on the volume of  
46 premiums written.

47 (4) The manager of a group, association, pool or  
48 organization of insurers which engage in joint under-  
49 writing or joint reinsurance and who are subject to  
50 examination by the official charged with regulation of  
51 insurance in the state in which the manager's principal  
52 business office is located.

53 (i) "Reinsurer" means any person, firm, association or  
54 corporation duly licensed or accredited in this state  
55 pursuant to the applicable provisions of this chapter as  
56 an insurer with the authority to assume reinsurance.

57 (j) "To be in violation" means that the reinsurance  
58 intermediary, insurer or reinsurer for whom the  
59 reinsurance intermediary was acting failed to substan-  
60 tially comply with the provisions of this article.

61 (k) For purposes of this article, a "qualified United  
62 States financial institution" means an institution that:

63 (1) Is organized or, in the case of a United States office  
64 of a foreign banking organization, licensed under the  
65 laws of the United States or any state thereof;

66 (2) Is regulated, supervised and examined by federal  
67 or state authorities having regulatory authority over  
68 banks and trust companies; and

69 (3) Has been determined by either the commissioner  
70 or the securities valuation office of the national associ-  
71 ation of insurance commissioners, to meet such stand-

72 ards of financial condition and standing as are consi-  
73 dered necessary and appropriate to regulate the quality  
74 of financial institutions whose letters of credit will be  
75 acceptable to the commissioner.

**§33-38-3. Licensure.**

1 (a) No person, firm, association or corporation may act  
2 as a reinsurance intermediary-broker in this state if the  
3 reinsurance intermediary-broker maintains an office  
4 either directly or as a member or employee of a firm  
5 or association, or an officer, director or employee of a  
6 corporation:

7 (1) In this state, unless such reinsurance intermediary-  
8 broker is a licensed producer in this state; or

9 (2) In another state, unless such reinsurance interme-  
10 diary-broker is a licensed producer in this state or  
11 another state having an article substantially similar to  
12 this law or such reinsurance intermediary-broker is  
13 licensed in this state as a nonresident reinsurance  
14 intermediary.

15 (b) No person, firm, association or corporation may act  
16 as a reinsurance intermediary-manager:

17 (1) For a reinsurer domiciled in this state, unless such  
18 reinsurance intermediary-manager is a licensed pro-  
19 ducer in this state;

20 (2) In this state, if the reinsurance intermediary-  
21 manager maintains an office either directly or as a  
22 member or employee of a firm or association, or an  
23 officer, director or employee of a corporation in this  
24 state, unless such reinsurance intermediary-manager is  
25 a licensed producer in this state;

26 (3) In another state for a nondomestic insurer, unless  
27 such reinsurance intermediary-manager is a licensed  
28 producer in this state or another state having an article  
29 substantially similar to this law or such person is  
30 licensed in this state as a nonresident reinsurance  
31 intermediary.

32 (c) The commissioner may require a reinsurance  
33 intermediary-manager subject to the provisions of

34 subsection (b) of this section to:

35 (1) File a bond in an amount from an insurer  
36 acceptable to the commissioner for the protection of the  
37 reinsurer; and

38 (2) Maintain an errors and omissions policy in an  
39 amount acceptable to the commissioner.

40 (d) The commissioner may issue a reinsurance inter-  
41 mediary license to any person, firm, association or  
42 corporation who has complied with the requirements of  
43 this article. Any license issued to a firm or association  
44 authorizes all the members of the firm or association  
45 and any designated employees to act as reinsurance  
46 intermediaries under the license, and all of these  
47 persons shall be named in the application and any  
48 supplements thereto. Any license issued to a corporation  
49 shall authorize all of the officers, and any designated  
50 employees and directors thereof to act as reinsurance  
51 intermediaries on behalf of such corporation, and all of  
52 these persons shall be named in the application and any  
53 supplements thereto.

54 (e) If the applicant for a reinsurance intermediary  
55 license is a nonresident, the applicant as a condition  
56 precedent to receiving or holding a license, shall  
57 designate the commissioner as agent for service of  
58 process in the manner and with the same legal effect  
59 provided for by this chapter for designation of service  
60 of process upon unauthorized insurers. The applicant  
61 shall also furnish the commissioner with the name and  
62 address of a resident of this state upon whom notices or  
63 orders of the commissioner or process affecting such  
64 nonresident reinsurance intermediary may be served.  
65 The licensee shall promptly notify the commissioner in  
66 writing of every change in its designated agent for  
67 service of process, and the change shall not become  
68 effective until acknowledged by the commissioner.

69 (f) The commissioner may refuse to issue a reinsu-  
70 rance intermediary license if, in his or her judgment,  
71 the applicant, any one named on the application or any  
72 member, principal, officer or director of the applicant  
73 is not trustworthy or that any controlling person of the

74 applicant is not trustworthy to act as a reinsurance  
75 intermediary or that any of the foregoing has given  
76 cause for revocation or suspension of such license or has  
77 failed to comply with any prerequisite for the issuance  
78 of the license. Upon written request therefor, the  
79 commissioner shall furnish a summary of the basis for  
80 refusal to issue a license, which document shall be  
81 privileged and not subject to the provisions of article  
82 one, chapter twenty-nine of the this code.

83 (g) Licensed attorneys at law of this state when acting  
84 in their professional capacity are exempt from this  
85 section.

**§33-38-4. Required contract provisions; reinsurance  
intermediary-brokers.**

1 (a) Transactions between a reinsurance intermediary-  
2 broker and the insurer it represents in that capacity  
3 may only be entered into pursuant to a written author-  
4 ization, specifying the responsibilities of each party.

5 (b) Each written authorization shall, at a minimum,  
6 provide that:

7 (1) The insurer may terminate the reinsurance  
8 intermediary-broker's authority at any time.

9 (2) The reinsurance intermediary-broker shall render  
10 accounts to the insurer accurately detailing all material  
11 transactions, including information necessary to support  
12 all commissions, charges and other fees received by, or  
13 owing, to the reinsurance intermediary-broker, and  
14 remit all funds due to the insurer within thirty days of  
15 receipt.

16 (3) All funds collected for the insurer's account shall  
17 be held by the reinsurance intermediary-broker in a  
18 fiduciary capacity in a bank which is a qualified United  
19 States financial institution as defined herein.

20 (4) The reinsurance intermediary-broker shall comply  
21 with section five of this article.

22 (5) The reinsurance intermediary-broker shall comply  
23 with the written standards established by the insurer  
24 for the cession or retrocession of all risks.

25 (6) The reinsurance intermediary-broker shall disclose  
26 to the insurer any relationship with any reinsurer to  
27 which business will be ceded or retroceded.

**§33-38-5. Books and records; reinsurance intermediary-  
brokers.**

1 (a) For at least ten years after expiration of each  
2 contract of reinsurance transacted by the reinsurance  
3 intermediary-broker, the reinsurance intermediary-  
4 broker will keep a complete record for each transaction  
5 showing:

6 (1) The type of contract, limits, underwriting restric-  
7 tions, classes or risks and territory;

8 (2) Period of coverage, including effective and  
9 expiration dates, cancellation provisions and notice  
10 required of cancellation;

11 (3) Reporting and settlement requirements of  
12 balances;

13 (4) Rate used to compute the reinsurance premium;

14 (5) Names and addresses of assuming reinsurers;

15 (6) Rates of all reinsurance commissions, including the  
16 commissions on any retrocessions handled by the  
17 reinsurance intermediary-broker;

18 (7) Related correspondence and memoranda;

19 (8) Proof of placement;

20 (9) Details regarding retrocessions handled by the  
21 reinsurance intermediary-broker including the identity  
22 of retrocessionaires and percentage of each contract  
23 assumed or ceded;

24 (10) Financial records, including but not limited to,  
25 premium and loss accounts; and

26 (11) When the reinsurance intermediary-broker  
27 procures a reinsurance contract on behalf of a licensed  
28 ceding insurer:

29 (A) Directly from any assuming reinsurer, written  
30 evidence that the assuming reinsurer has agreed to

31 assume the risk; or

32 (B) If placed through a representative of the assuming  
33 reinsurer, other than an employee, written evidence that  
34 such reinsurer has delegated binding authority to the  
35 representative.

36 (b) The insurer shall have access and the right to copy  
37 and audit all accounts and records maintained by the  
38 reinsurance intermediary-broker related to its business  
39 in a form usable by the insurer.

**§33-38-6. Duties of insurers utilizing the services of a  
reinsurance intermediary-broker.**

1 (a) An insurer may not engage the services of any  
2 person, firm, association or corporation to act as a  
3 reinsurance intermediary-broker on its behalf unless  
4 that person is licensed as required by subsection (a),  
5 section three of this article.

6 (b) An insurer may not employ an individual who is  
7 employed by a reinsurance intermediary-broker with  
8 which it transacts business, unless the reinsurance  
9 intermediary-broker is under common control with the  
10 insurer and subject to article twenty-seven of this  
11 chapter.

12 (c) The insurer shall annually obtain a copy of  
13 statements of the financial condition of each reinsurance  
14 intermediary-broker with which it transacts business.

**§33-38-7. Required contract provisions; reinsurance  
intermediary-managers.**

1 (a) Transactions between a reinsurance intermediary-  
2 manager and the reinsurer it represents in that capacity  
3 may only be entered into pursuant to a written contract,  
4 specifying the responsibilities of each party, which shall  
5 be approved by the reinsurer's board of directors. At  
6 least thirty days before such reinsurer assumes or cedes  
7 business through such producer, a true copy of the  
8 approved contract shall be filed with the commissioner  
9 for approval.

10 (b) Every contract required by this section shall, at  
11 a minimum, provide, that:

12 (1) The reinsurer may terminate the contract for cause  
13 upon written notice to the reinsurance intermediary-  
14 manager. The reinsurer may immediately suspend the  
15 authority of the reinsurance intermediary-manager to  
16 assume or cede business during the pendency of any  
17 dispute regarding the cause for termination.

18 (2) The reinsurance intermediary-manager shall  
19 render accounts to the reinsurer accurately detailing all  
20 material transactions, including information necessary  
21 to support all commissions, charges and other fees  
22 received by, or owing to the reinsurance intermediary-  
23 manager, and remit all funds due under the contract to  
24 the reinsurer on not less than a monthly basis.

25 (3) All funds collected for the reinsurer's account shall  
26 be held by the reinsurance intermediary-manager in a  
27 fiduciary capacity in a bank which is a qualified United  
28 States financial institution as defined herein. The  
29 reinsurance intermediary-manager may retain no more  
30 than three months estimated claims payments and  
31 allocated loss adjustment expenses. The reinsurance  
32 intermediary-manager shall maintain a separate bank  
33 account for each reinsurer that it represents.

34 (4) For at least ten years after expiration of each  
35 contract of reinsurance transacted by the reinsurance  
36 intermediary-manager, the reinsurance intermediary-  
37 manager shall keep a complete record for each transac-  
38 tion showing:

39 (A) The type of contract, limits, underwriting restric-  
40 tions, classes of risks and territory;

41 (B) Period of coverage, including effective and  
42 expiration dates, cancellation provisions and notice  
43 required of cancellation, and disposition of outstanding  
44 reserves on covered risks;

45 (C) Reporting and settlement requirements of  
46 balances;

47 (D) Rate used to compute the reinsurance premium;

48 (E) Names and addresses of reinsurers;

49 (F) Rates of all reinsurance commissions, including

50 the commissions on any retrocessions handled by the  
51 reinsurance intermediary-manager;

52 (G) Related correspondence and memoranda;

53 (H) Proof of placement;

54 (I) Details regarding retrocessions handled by the  
55 reinsurance intermediary-manager, as permitted by  
56 subsection (d), section nine of this article, including the  
57 identity of retrocessionaires and percentage of each  
58 contract assumed or ceded;

59 (J) Financial records, including but not limited to,  
60 premium and loss accounts; and

61 (K) When the reinsurance intermediary-manager  
62 places a reinsurance contract on behalf of a ceding  
63 insurer:

64 (i) Directly from any assuming reinsurer, written  
65 evidence that the assuming reinsurer has agreed to  
66 assume the risk; or

67 (ii) If placed through a representative of the assuming  
68 reinsurer, other than an employee, written evidence that  
69 such reinsurer has delegated binding authority to the  
70 representative.

71 (5) The reinsurer shall have access and the right to  
72 copy all accounts and records maintained by the  
73 reinsurance intermediary-manager related to its busi-  
74 ness in a form usable by the reinsurer.

75 (6) The contract cannot be assigned in whole or in part  
76 by the reinsurance intermediary-manager.

77 (7) The reinsurance intermediary-manager shall  
78 comply with the written underwriting and rating  
79 standards established by the insurer for the acceptance,  
80 rejection or cession of all risks.

81 (8) Sets forth the rates, terms and purposes of  
82 commissions, charges and other fees which the reinsu-  
83 rance intermediary-manager may levy against the  
84 reinsurer.

85 (9) If the contract permits the reinsurance interme-

86 diary-manager to settle claims on behalf of the  
87 reinsurer:

88 (A) All claims shall be reported to the reinsurer in a  
89 timely manner;

90 (B) A copy of the claim file shall be sent to the  
91 reinsurer at its request or as soon as it becomes known  
92 that the claim:

93 (i) Has the potential to exceed the lesser of an amount  
94 determined by the commissioner or the limit set by the  
95 reinsurer;

96 (ii) Involves a coverage dispute;

97 (iii) May exceed the reinsurance intermediary-  
98 manager's claims settlement authority;

99 (iv) Is open for more than six months; or

100 (v) Is closed by payment of the lesser of an amount  
101 set by the commissioner or an amount set by the  
102 reinsurer;

103 (C) All claim files will be the joint property of the  
104 reinsurer and reinsurance intermediary-manager.  
105 However, upon an order of liquidation of the reinsurer  
106 these files shall become the sole property of the  
107 reinsurer or its estate. The reinsurance intermediary-  
108 manager shall have reasonable access to and the right  
109 to copy the files on a timely basis;

110 (D) Any settlement authority granted to the reinsu-  
111 rance intermediary-manager may be terminated for  
112 cause upon the reinsurer's written notice to the reinsu-  
113 rance intermediary-manager or upon the termination of  
114 the contract. The reinsurer may suspend the settlement  
115 authority during the pendency of the dispute regarding  
116 the cause of termination.

117 (10) If the contract provides for a sharing of interim  
118 profits by the reinsurance intermediary-manager that  
119 these interim profits may not be paid until one year  
120 after the end of each underwriting period for property  
121 business, and five years after the end of each under-  
122 writing period for casualty business, or a later period

123 set by the commissioner for specified lines of insurance,  
124 and not until the adequacy of reserves on remaining  
125 claims has been verified pursuant to subsection (c),  
126 section nine of this article.

127 (11) The reinsurance intermediary-manager shall  
128 annually provide the reinsurer with a statement of its  
129 financial condition prepared by an independent certified  
130 public accountant.

131 (12) The reinsurer shall periodically, at least semi-  
132 annually, conduct an on-site review of the underwriting  
133 and claims processing operations of the reinsurance  
134 intermediary-manager.

135 (13) The reinsurance intermediary-manager shall  
136 disclose to the reinsurer any relationship it has with any  
137 insurer prior to ceding or assuming any business with  
138 such insurer pursuant to this contract.

139 (14) Within the scope of its actual or apparent  
140 authority, the acts of the reinsurance intermediary-  
141 manager are deemed to be the acts of the reinsurer on  
142 whose behalf it is acting.

### §33-38-8. Prohibited acts.

1 The reinsurance intermediary-manager may not:

2 (a) Cede retrocessions on behalf of the reinsurer,  
3 except that the reinsurance intermediary-manager may  
4 cede facultative retrocessions pursuant to obligatory  
5 facultative agreements if the contract with the reinsurer  
6 contains reinsurance underwriting guidelines for the  
7 retrocessions. The guidelines shall include a list of  
8 reinsurers with which the automatic agreements are in  
9 effect, and for each reinsurer, the coverages and  
10 amounts or percentages that may be reinsured, and  
11 commission schedules.

12 (b) Commit the reinsurer to participate in reinsurance  
13 syndicates.

14 (c) Appoint any producer without assuring that the  
15 producer is lawfully licensed to transact the type of  
16 reinsurance for which he is appointed.

17 (d) Without prior approval of the reinsurer, pay or  
18 commit the reinsurer to pay a claim, net of retroces-  
19 sions, that exceeds the lesser of an amount specified by  
20 the reinsurer or one percent of the reinsurer's policy-  
21 holder's surplus as of the thirty-first day of December,  
22 next preceding.

23 (e) Collect any payment from a retrocessionaire or  
24 commit the reinsurer to any claim settlement with a  
25 retrocessionaire, without prior approval of the rein-  
26 surer. If prior approval is given, a report must be  
27 promptly forwarded to the reinsurer.

28 (f) Jointly employ an individual who is employed by  
29 the reinsurer unless such reinsurance intermediary-  
30 manager is under common control with the reinsurer  
31 subject to article twenty-seven of this chapter.

32 (g) Appoint a subreinsurance intermediary-manager.

**§33-38-9. Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.**

1 (a) A reinsurer may not engage the services of any  
2 person, firm, association or corporation to act as a  
3 reinsurance intermediary-manager on its behalf unless  
4 that person is licensed as required by subsection (b),  
5 section three of this article.

6 (b) The reinsurer shall annually obtain a copy of  
7 statements of the financial condition of each reinsurance  
8 intermediary-manager which such reinsurer has en-  
9 gaged prepared by an independent certified public  
10 accountant in a form acceptable to the commissioner.

11 (c) If a reinsurance intermediary-manager establishes  
12 loss reserves, the reinsurer shall annually obtain the  
13 opinion of an actuary attesting to the adequacy of loss  
14 reserves established for losses incurred and outstanding  
15 on business produced by the reinsurance intermediary-  
16 manager. This opinion shall be in addition to any other  
17 required loss reserve certification.

18 (d) Binding authority for all retrocessional contracts  
19 or participation in reinsurance syndicates shall rest with  
20 an officer of the reinsurer who may not be affiliated

21 with the reinsurance intermediary-manager.

22 (e) Within thirty days of termination of a contract  
23 with a reinsurance intermediary-manager, the reinsurer  
24 shall provide written notification of such termination to  
25 the commissioner.

26 (f) A reinsurer may not appoint to its board of  
27 directors, any officer, director, employee, controlling  
28 shareholder or subproducer of its reinsurance interme-  
29 diary-manager. This subsection does not apply to  
30 relationships governed by article twenty-seven of this  
31 chapter.

**§33-38-10. Examination authority.**

1 (a) A reinsurance intermediary is subject to examina-  
2 tion by the commissioner at his or her discretion. The  
3 commissioner shall have access to all books, bank  
4 accounts and records of the reinsurance intermediary in  
5 a form usable to the commissioner.

6 (b) A reinsurance intermediary-manager may be  
7 examined as if it were the reinsurer.

**§33-38-11. Penalties and liabilities.**

1 (a) A reinsurance intermediary, insurer or reinsurer  
2 found by the commissioner, after a hearing conducted  
3 in accordance with section thirteen, article two, of this  
4 chapter, to be in violation of any provision or provisions  
5 of this article, shall:

6 (1) For each separate violation, pay a penalty in an  
7 amount not exceeding five thousand dollars;

8 (2) Be subject to revocation or suspension of its license;  
9 and

10 (3) If a violation was committed by the reinsurance  
11 intermediary, such reinsurance intermediary shall  
12 make restitution to the insurer, reinsurer, rehabilitator  
13 or liquidator of the insurer or reinsurer for the net losses  
14 incurred by the insurer or reinsurer attributable to the  
15 violation.

16 (b) The decision, determination or order of the  
17 commissioner pursuant to subsection (a) of this section

18 is subject to judicial review pursuant to section fourteen,  
19 article two of this chapter.

20 (c) Nothing contained in this section may affect the  
21 right of the commissioner to impose any other penalties  
22 provided in the insurance law.

23 (d) Nothing contained in this article is intended to or  
24 may in any manner limit or restrict the rights of  
25 policyholders, claimants, creditors or other third parties  
26 or confer any rights to such persons.

**§33-38-12. Regulatory authority.**

1 The commissioner is hereby authorized to promulgate  
2 reasonable rules, pursuant to chapter twenty-nine-a of  
3 the West Virginia code, for the implementation and  
4 administration of the provisions of this article. These  
5 rules to include but not be limited to setting reasonable  
6 fees and standards for licensing.

**§33-38-13. Effective date.**

1 This article shall take effect on the first day of  
2 January, one thousand nine hundred ninety-four. No  
3 insurer or reinsurer may continue to utilize the services  
4 of a reinsurance intermediary on and after the effective  
5 date unless utilization is in compliance with this article.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker of the House of Delegates

The within *is approved* ..... this the *6th* day of *May* ..... 1993.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/23/93

Time 11.30