WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

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ENROLLED

HOUSE BILL No. 2286

(By Delegates Phillips, P. White, Carper, Michael and Huntwork)

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Passed April 9, 1993

In Effect Ninety Days from Passage
ENROLLED

H. B. 2286

(By Delegates Phillips, P. White, Carper, Michael and Huntwork)

[Passed April 9, 1963; in effect ninety days from passage.]

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 chapter 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-
Enr. H. B. 2286] 2

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.

(a) The purpose of this section is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this section are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance related laws of this state.

(b) For purposes of this section, the following definitions shall apply:

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

(2) "Company" or "insurance company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner, including, but not limited to any domestic or foreign stock company, mutual company, mutual protective association, farmers mutual fire companies, fraternal benefit society, reciprocal or inter-insurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organiza-
tion, captive insurance company, risk retention group or
other insurer, regardless of the type of coverage written,
benefits provided or guarantees made by each.

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

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

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

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

(1) The insurance department was at the time of the
examination accredited under the national association of
insurance commissioners' financial regulation standards
and accreditation program; or
(2) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

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

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

(g) The commissioner may also cause to be examined at such times as he or she deems necessary the books, records, papers, documents, correspondence and methods of doing business of any agent, broker, excess lines broker or solicitor licensed by this state. For these purposes the commissioner or his examiners shall have free access to all books, records, papers, documents and correspondence of all the agents, brokers, excess lines brokers and solicitors wherever the books, records, papers, documents and records are situate. The commissioner may revoke the license of any agent, broker, excess lines broker or solicitor who refuses to submit to such examination;

(h) In addition to conducting an examination, the commissioner or his examiners may, as the commis-
sioner deems necessary, analyze or review any phase of
the operations or methods of doing business of an
insurer, agent, broker, excess lines broker, solicitor or
other individual or corporation transacting or attempting
to transact an insurance business in the state of West
Virginia. The commissioner may use the full resources
provided by this section in carrying out these responsi-
bilities, including any personnel and equipment pro-
vided by this section as the commissioner deems
necessary.

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

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

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

(3) The refusal of any company, by its officers,
directors, employees or agents, to submit to examination
or to comply with any reasonable written request of the
examiners shall be grounds for suspension, revocation,
refusal or nonrenewal of any license or authority held
by the company to engage in an insurance or other
business subject to the commissioner's jurisdiction. Any
proceedings for suspension, revocation, refusal, or
nonrenewal of any license or authority shall be con-
ducted pursuant to section eleven, article two of this
chapter.

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

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

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

(7) Nothing contained in this section may be construed
to limit the commissioner's authority to use and, if
appropriate, to make public any final or preliminary
examination report, any examiner or company workpap-
ers or other documents or any other information
discovered or developed during the course of any
examination, analysis or review in the furtherance of
any legal or regulatory action which the commissioner
may, in his or her sole discretion, deem appropriate. An
examination report, when filed, shall be admissible in
evidence in any action or proceeding brought by the
commissioner against an insurance company, its officers
or agents and shall be prima facie evidence of the facts
stated therein.

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

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

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

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

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

(B) Rejecting the examination report with directions
to the examiners to reopen the examination for purposes
of obtaining additional data, documentation or informa-
tion and refiling pursuant to subdivision (2) above; or

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

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

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

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

(2) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner
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, the company or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner’s representative shall be under oath and preserved for the record. Nothing contained in this section shall require the commissioner to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(3) The hearing shall proceed with the commissioner or the commissioner’s representative posing questions to the persons subpoenaed. Thereafter the company and the department may present testimony relevant to the investigation. Cross examination may be conducted only by the commissioner or the commissioner’s representative. The company and the commissioner shall be permitted to make closing statements and may be represented by counsel of their choice.

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

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

(2) Nothing contained in this section may prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results or any matter relating thereto or the results of any analysis or review to the insurance department of this or any other state or country or to law enforcement officials of this or any
other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this section.

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

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

(m) No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this section. This section shall not be construed to automatically preclude an examiner from being:

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

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

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

(4) A settlor or beneficiary of a "blind trust" into
(5) Notwithstanding the requirements of this subsection, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this section.

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

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

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

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

(o) All insurers subject to the provisions of this section of the code shall annually pay to the commissioner on or before the first day of July, one thousand nine hundred ninety-one and every first day of July thereafter an examination assessment fee of eight hundred
dollars. Four hundred fifty dollars of this fee shall be paid to the treasurer of the state to the credit of a special revolving fund to be known as the "Commissioner's Examination Revolving Fund" which is hereby established and three hundred fifty dollars shall be paid to the treasurer of the state. The commissioner may at his discretion, upon notice to the insurers subject to this section, increase this examination assessment fee or levy an additional examination assessment fee of two hundred fifty dollars. In no event may the total examination assessment fee including any additional examination assessment fee levied exceed one thousand five hundred dollars per insurer in any calendar year.

(p) The moneys collected by the commissioner from an increase or additional examination assessment fee shall be paid to the treasurer of the state to be credited to the "Commissioner's Examination Revolving Fund." Any funds expended or obligated by the commissioner from the "Commissioner's Examination Revolving Fund" may be expended or obligated solely for defrayment of the costs of examinations, analyses or reviews of the financial affairs and business practices of insurance companies, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state made by the commissioner pursuant to this section or for the purchase of equipment and supplies, travel, education and training for the commissioner's deputies, other employees and appointed examiners necessary for the commissioner to fulfill the statutory obligations created by this section.

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

(1) Bill and receive payments directly from the insurance company being examined, analyzed or re-
viewed for their work, travel and living expenses as previously provided for in this section; or

(2) If an individual agent, broker or solicitor is being examined, analyzed or reviewed, bill and receive payments directly from the “Commissioner's Examination Revolving Fund” for their work, travel and living expenses as previously provided for in this section.

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

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

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

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

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-1. License required.

(a) No person may act as an insurer and no insurer
may transact insurance in West Virginia except as
authorized by a valid license issued by the commis-
sioner, except as to such transactions as are expressly
otherwise provided for in this chapter.

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

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

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

(e) Any officer, director, agent, representative or
employee of any insurer who willfully authorizes,
negotiates, makes or issues any insurance contract in
violation of this section is guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not more than ten
thousand dollars, or imprisoned in the county jail not
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 the business of insurance in the state of West Virginia unless it has fully paid in capital stock, if a stock insurer, or surplus, if a mutual insurer, of at least one million dollars. In addition, each such insurer shall have and maintain additional surplus funds of at least one million dollars: Provided, That insurers duly licensed to transact insurance in West Virginia prior to the effective date of this section whose capital and surplus requirements are increased by virtue of this section shall have until the first day of January, one thousand nine hundred ninety-three, to meet such increased requirements. Such capital and surplus shall be unencumbered.

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

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

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15. Reinsurance.

(a) For purposes of this section, an “assumption reinsurance agreement” means any contract which:

1. Transfers insurance obligations and/or risks of existing or in-force contracts of insurance from a
transferring insurer to an assuming insurer; and

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

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

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

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

(e) A licensed insurer may reinsure all or substantially all of its risks on property or lives located in West Virginia, or substantially all of a major class thereof, with another insurer by an assumption reinsurance agreement: Provided, That the assumption reinsurance agreement shall not become effective unless filed in advance with and approved in writing by the commissioner: Provided, however, That if a licensed insurer is deemed by the commissioner to be in hazardous financial condition, as defined in article thirty-four-a of this chapter, or an administrative or judicial proceeding has been instituted against it for the purpose of liquidating, reorganizing or conserving such insurer, and the transfer of the contracts of insurance is determined by the commissioner to be in the best interest of the policyholders, the commissioner may by
written order waive the advance filing and approval required by this section, which such waiver may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer.

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

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

(h) The commissioner shall promulgate rules and regulations pursuant to chapter twenty-nine-a of this code for the implementation and administration of the provisions of this section to include, but not be limited to, the type of assumption agreements subject to the provisions of this section, their content and the standards the commissioner may utilize in reviewing the agreements.

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

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

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

(1) Has filed an application for accreditation and received a letter of accreditation from the commissioner;
(2) Is licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Cash;

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

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

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

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

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

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

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

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

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

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

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

§33-24-4. Exemptions; applicability of insurance laws.
Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article shall not be applicable thereto; article six, section thirty-four (fee for form and rate filing); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eleven (unfair trade practices); article twelve (agents, brokers and solicitors), except that the agent's license fee shall be five dollars; section fourteen, article fifteen (individual accident and sickness insurance); article fifteen-a (long-term care insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental illness); section three-c, article sixteen (group accident and sickness insurance); section three-d, article sixteen (medicare supplement insurance); section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one; article twenty-seven (insurance holding company systems); article twenty-eight (individual accident and sickness insurance minimum standards); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); and article thirty-seven (managing general agents); and
no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article. If, however, the corporation is converted into a corporation organized for a pecuniary profit or if it transacts business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

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

Corporations organized under this article are subject to supervision and regulation of the insurance commissioner. The corporations organized under this article, to the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article four (general provisions), except that section sixteen of said article shall not be applicable thereto; article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article ten (rehabilitation and liquidation); section fourteen, article fifteen (individual accident and sickness insurance); section three, article sixteen (required policy provisions); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); and article thirty-seven (managing general agents); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article.
ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.


As used in this article:

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

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

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

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

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

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

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

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

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


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

ARTICLE 31. CAPTIVE INSURANCE.


1 A captive insurance company may procure reinsurance or issue policies of reinsurance to other licensed insurers transacting like kinds of insurance, pursuant to
ARTICLE 32. RISK RETENTION ACT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A purchasing group which intends to do business
in this state shall, prior to doing business, furnish notice
to the commissioner, on forms prescribed by the national
association of insurance commissioners, which such
forms shall:
(1) Identify the state in which the group is domiciled;
(2) Identify all other states in which the group intends
to do business;
(3) Specify the lines and classifications of liability
insurance which the purchasing group intends to
purchase;
(4) Identify the insurance company or companies from
which the group intends to purchase its insurance and
the domicile of such company;
(5) Specify the method by which, and the person or
persons, if any, through whom insurance will be offered
to its members whose risks are resident or located in
this state;
(6) Identify the principal place of business of the
groups; and
(7) Provide any other information as may be required
by the commissioner to verify that the purchasing group
is qualified under this article.
(b) A purchasing group shall, within ten days, notify
the commissioner of any changes in any of the items set
forth in this section.
(c) The purchasing group shall register with and
designate the commissioner, or other appropriate
authority, as its agent solely for the purpose of receiving
service of legal documents or process: Provided, That
these requirements do not apply in the case of a
purchasing group which:
(1) Was domiciled before the first day of April, one
thousand nine hundred eighty-six in any state of the
United States; and
(2) Is domiciled on and after the twenty-seventh day
of October, one thousand nine hundred eighty-six, in any
state of the United States and which:
(A) Before the twenty-seventh day of October, one thousand nine hundred eighty-six, purchased insurance from an insurance carrier licensed in any state; and

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

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

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

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

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

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

(3) Determine appropriate tax treatment.

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

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

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

(a) The purpose of this article is to improve the insurance commissioner's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

(b) Foreign or alien insurers filing audited financial
reports in another state, pursuant to the other state’s requirement of audited financial reports which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from this article if:

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

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

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

§33-33-2. Definitions.

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

(b) “Annual statement” means the annual financial statement required to be filed by insurers with the commissioner pursuant to the provisions of this chapter.

(c) “Audited financial report” means and includes those items specified in section four of this article.

(d) “Insurer” for purposes of this article means any domestic insurer as defined in section six, article one of
this chapter, and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group and any licensed foreign or alien insurer defined in article one of this chapter.

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

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

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


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

(b) The annual audited financial report shall include the following:
(1) Report of independent certified public accountant;
(2) Balance sheet reporting admitted assets, liabilities, capital and surplus;
(3) Statement of gain or loss from operations or statement of revenue and expenses;
(4) Statement of cash flows statement;
(5) Statement of changes in capital and surplus;
(6) Notes to financial statements. These notes shall be those required by the appropriate national association of insurance commissioners annual statement instructions and any other notes required by generally accepted accounting principles and shall also include:
   (A) A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement with a written description of the nature of these differences;
   (B) A summary of ownership and relationships of the insurer and all affiliated companies.
(7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner; and:
   (A) The financial statement shall be comparative, presenting the amounts as of the thirty-first day of December of the current year and the amounts as of the immediately preceding thirty-first day of December: Provided, That in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.
   (B) Amounts may be rounded to the nearest thousand dollars;
(8) Supplementary data and information. This shall include any additional clarifying information or data which the commissioner may require to be disclosed.
§33-33-5. Designation of independent certified public accountant.
(a) Each insurer required by this article to file an annual audited financial report must, within sixty days after becoming subject to such these requirements, register with the commissioner in writing the name and address of the certified public accountant or accounting firm (generally referred to in this article as the “accountant”) retained to conduct the annual audit set forth in this article.

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

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

(d) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall within five business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding the notification there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfac-
tion. Disagreements contemplated by this section are those that occur at the decision-making level between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish it a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

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

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

(b) Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the code of professional ethics of the American institute of certified public accountants and the rules and regulations and code of ethics and rules of professional conduct of the West Virginia board of accountancy.

(c) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:
(1) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(2) Premium volume of the insurer; or

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

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

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

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

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

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

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

(a) An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agree-
ment that affects the solvency and integrity of the insurer’s reserves and the insurer cedes all of its direct and assumed business to the pool. If an approval is granted, a columnar consolidating or combining worksheet shall be filed with the report incorporating the following:

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

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

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

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

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

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

(C) An insurer who does not receive approval from the commissioner to file an audited financial report covering combined or consolidated audited financial statements for the insurer and any of its subsidiaries or affiliates must file pursuant to all the requirements of this article a separate audited financial report for the insurer and each subsidiary or affiliate.

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

(a) The independent certified public accountant shall immediately notify, in writing, an officer or director of the insurer and the commissioner of any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the thirty-first day of December immediately preceding, or of any determination that the insurer does not meet the applicable minimum capital and surplus requirement of this chapter or in the case of an insurer not subject to capital and surplus requirement, that the surplus of the insurer is less than one hundred thousand dollars as of the thirty-first day of December immediately preceding. For purposes of this article material misstatement shall have the meaning prescribed by the professional standards and pronouncements of the American institute of certified public accountants: Provided, That the independent certified public accountant shall report a misstatement that overstates the surplus as regards policyholders in single financial statement items by five percent or more, or when taken together with all financial statement items, the surplus as regards policyholders is overstated by ten percent or more.

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

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

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

(a) In addition to the annual audited financial reports, each insurer shall furnish the commissioner with a written report prepared by the accountant describing
significant deficiencies in the insurer's internal control. Structure noted by the accountant during the audit. Statement on auditing standards (SAS) No. 60, “Communication of Internal Control Structure Matters Noted in an Audit”, AU Section 325 of the professional standards of the American Institute of Certified Public Accountants, requires an accountant to communicate significant deficiencies, known as “reportable conditions”, noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies.

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


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

(1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the code of professional ethics and pronouncements of the American Institute of Certified Public Accountants and the rules of professional conduct of the West Virginia Board of Accountancy.

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

(3) That the accountant understands the annual audited financial report and the opinion thereon will be
filed in compliance with this article and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

(4) That the accountant consents to the requirements of section eleven of this article and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner’s designee or appointed agent, the workpapers, as defined in section eleven.

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

(6) A representation that the accountant is in compliance with the requirements of section six of this article.

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

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

(b) Every insurer required to file an audited financial report pursuant to this article, shall require the accountant to make available for review by the commissioner the workpapers prepared in the conduct of the examination. The insurer shall require that the accountant retain the audit workpapers and any communications related to the audit between the accountant and the
insurer, at the offices of the insurer, at the insurance department or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the commissioner has filed a report of examination, as required by section nine, article two of this chapter, covering the period of the audit but no longer than seven years from the date of the audit report.

(c) In the conduct of the aforementioned periodic review by the commissioner, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner. Reviews by the commissioner shall be considered investigations and all workpapers and communications obtained during the course of any investigations shall be afforded the same confidentiality as other examination workpapers generated by the commissioner.


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

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

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

(a) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by the companies with their domiciliary supervision
authority duly audited by an independent chartered accountant.

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


If any section or portion of a section of this article or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the article or the applicability of the provision to other persons or 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.

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

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

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

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

(4) Increase the insurer's liability in an amount equal to any contingent liability, pledge or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.
(b) If, after notice of hearing, the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the commissioner may, upon his determination, issue an order requiring the insurer to:

1. Reduce the total amount of present and potential liability for policy benefits by reinsurance;
2. Reduce, suspend or limit the volume of business being accepted or renewed;
3. Reduce general insurance and commission expenses by specified methods;
4. Increase the insurer's capital and surplus;
5. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
6. File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;
7. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
8. Document the adequacy of premium rates in relation to the risks insured; or
9. File, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or on such format as promulgated by the commissioner. If the insurer is a foreign insurer the commissioner's order may be limited to the extent provided by statute.

(c) An order issued pursuant to the provisions of this article is subject to review pursuant to applicable state administrative proceedings under article two of this chapter: Provided, That all hearings pursuant to this section shall be held privately, unless the insurer requests a public hearing, in which case the hearing 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 with Producer Controlled Insurer Act.”

§33-36-2. Definitions.
1 As used in this article:

(a) “Accredited state” means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

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

(c) “Controlled insurer” means a licensed insurer which is controlled, directly or indirectly, by a producer.

(d) “Controlling producer” means a producer who,
directly or indirectly, controls an insurer.

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

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

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

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

(f) "Producer" means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, the person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association or corporation: Provided, That the designation of any individual or entity as a producer does not expand upon or provide for activities beyond those permitted by article twelve of this chapter.

§33-36-3. Applicability.

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


(a) The provisions of this section apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five
percent of the admitted assets of the controlled insurer, as reported in the controlled insurers’ quarterly statement filed as of the thirtieth day of September of the prior year: Provided, That the provisions of this section shall do not apply if:

(1) The controlling producer:

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

(B) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and

(2) The controlled insurer accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer: Provided, That the provisions of this subdivision do not apply to insurance business written through a residual market facility such as the “West Virginia Essential Property Insurance Association” or the “West Virginia Automobile Insurance Plan.”

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

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

(2) The controlling producer shall render accounts to
the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer;

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

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

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

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

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

(8) The rates and terms of the controlling producer's commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions,
charges and other fees may be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subdivision and subdivision (7) of this subsection, examples of "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits and similar quality of business;

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

(10) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(11) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.
(c) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

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

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

2. A report and summary of the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

§33-36-5. Disclosure.

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

§33-36-6. Penalties.

(a) If the commissioner believes that the controlling producer or any other person has not materially complied with this article, or any rule or order promul-
gated hereunder, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer.

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

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

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

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

§33-36-7. Effective date.

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

ARTICLE 38. REINSURANCE INTERMEDIARY ACT.

§33-38-1. Short title.
This article may be cited as the “Reinsurance Intermediary Act.”


As used in this article:

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

(b) “Controlling person” means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.

(c) “Commissioner” means the insurance commissioner of West Virginia.

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

(e) “Licensed producer” means an agent or reinsurance intermediary licensed pursuant to the applicable provisions of this chapter.

(f) “Reinsurance intermediary” means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subdivisions (g) and (h) of this section.

(g) “Reinsurance intermediary-broker” means any person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.

(h) “Reinsurance intermediary-manager” means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer including the management of a separate division, department or underwriting office and acts as an agent for such reinsurer whether known as a reinsurance intermediary-manager, manager or other similar term. Not-
withstanding the above, the following persons are not considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this article:

(1) An employee of the reinsurer;

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

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

(4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the official charged with regulation of insurance in the state in which the manager’s principal business office is located.

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

(j) “To be in violation” means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this article.

(k) For purposes of this article, a “qualified United States financial institution” means an institution that:

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

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

(3) Has been determined by either the commissioner or the securities valuation office of the national association of insurance commissioners, to meet such stand-
ards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

§33-38-3. Licensure.

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

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

(2) In another state, unless such reinsurance intermediary-broker is a licensed producer in this state or another state having an article substantially similar to this law or such reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

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

(1) For a reinsurer domiciled in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

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

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

(c) The commissioner may require a reinsurance intermediary-manager subject to the provisions of
subsection (b) of this section to:

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

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

(d) The commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of this article. Any license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all of these persons shall be named in the application and any supplements thereto. Any license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all of these persons shall be named in the application and any supplements thereto.

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

(f) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, any one named on the application or any member, principal, officer or director of the applicant is not trustworthy or that any controlling person of the
applicant is not trustworthy to act as a reinsurance intermediary or that any of the foregoing has given cause for revocation or suspension of such license or has failed to comply with any prerequisite for the issuance of the license. Upon written request therefor, the commissioner shall furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to the provisions of article one, chapter twenty-nine of the this code.

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

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

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

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

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

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

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

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

(5) The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.
The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

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

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

(1) The type of contract, limits, underwriting restrictions, classes or risks and territory;

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

(3) Reporting and settlement requirements of balances;

(4) Rate used to compute the reinsurance premium;

(5) Names and addresses of assuming reinsurers;

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

(7) Related correspondence and memoranda;

(8) Proof of placement;

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

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

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

(A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to
assume the risk; or

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

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

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

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

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

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

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

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

(b) Every contract required by this section shall, at
a minimum, provide, that:
(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

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

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

(4) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

(A) The type of contract, limits, underwriting restrictions, classes of risks and territory;

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

(C) Reporting and settlement requirements of balances;

(D) Rate used to compute the reinsurance premium;

(E) Names and addresses of reinsurers;

(F) Rates of all reinsurance commissions, including
the commissions on any retrocessions handled by the
reinsurance intermediary-manager;

(G) Related correspondence and memoranda;

(H) Proof of placement;

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

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

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

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

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

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

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

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

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

(9) If the contract permits the reinsurance interme-
diary-manager to settle claims on behalf of the reinsurer:

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

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

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

(ii) Involves a coverage dispute;

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

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

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

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

(D) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager that these interim profits may not be paid until one year after the end of each underwriting period for property business, and five years after the end of each underwriting period for casualty business, or a later period
set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to subsection (c), section nine of this article.

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

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

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

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


The reinsurance intermediary-manager may not:

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

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

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

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

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

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

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who may not be affiliated
with the reinsurance intermediary-manager.

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

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

§33-38-10. Examination authority.

(a) A reinsurance intermediary is subject to examination by the commissioner at his or her discretion. The commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the commissioner.

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


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

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

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

and

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

(b) The decision, determination or order of the commissioner pursuant to subsection (a) of this section
is subject to judicial review pursuant to section fourteen, article two of this chapter.

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

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


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


This article shall take effect on the first day of January, one thousand nine hundred ninety-four. No insurer or reinsurer may continue to utilize the services of a reinsurer intermediary by and after the effective date unless utilization is in compliance with this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor