WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED
Committee Substitute for
SENATE BILL NO. 434
(By Senator Minard)

PASSED March 11, 1994
In Effect 90 days from Passage
AN ACT to amend and reenact sections ten, eleven and twelve, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article twenty-two of said chapter; to amend and reenact section two, article twenty-three of said chapter; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; to amend and reenact section four and five, article twenty-seven of said chapter; to amend and reenact sections one and six, article thirty-one of said chapter; to amend and reenact section three, article thirty-two of said chapter; and to further
amend said chapter by adding thereto two new articles, designated articles thirty-nine and forty, all relating to insurance; assets and liabilities; valuation of bonds; valuation of other securities; valuation of real property; farmers' mutual fire insurance companies; applicability of other provisions; fraternal benefit societies; applicability of other provisions; hospital service corporations, medical service corporations, dental service corporations and health service corporations; exemptions; applicability of insurance laws; health care corporations; supervision and regulation by insurance commissioner; exemption from insurance laws; health maintenance organization act; issuance of certificate of authority; insurance holding company systems; registration of insurers; standards; captive insurance; definitions; corporate organization; risk retention act; charter and license requirements for domestic groups; disclosure of material transactions; report; acquisitions and dispositions of assets; non-renewals, cancellations or revisions of ceded reinsurance programs; effective date; risk based capital for life and/or health insurers; definitions; risk based capital reports; company action level event; regulatory action level event; authorized control level event; mandatory control level event; hearings; confidentiality and prohibition on announcements; supplemental provisions; foreign insurers; severability clause; notices; and effective date.

Be it enacted by the Legislature of West Virginia:

That sections ten, eleven and twelve, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article twenty-two of said chapter be amended and reenacted; that section two, article twenty-three of said chapter be amended and reenacted; that section four, article twenty-four of said chapter be amended and reenacted; that section twenty-four, article twenty-five of said chapter be amended and reenacted; that section six, article twenty-five of said chapter be amended and reenacted; that section twenty-four, article twenty-five-a of said chapter be amended and reenacted; that sections four and five, article twenty-seven of said chapter be amended and reenacted; that sections one and six, article
thirty-one of said chapter be amended and reenacted; that section three, article thirty-two of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto two new articles, designated articles thirty-nine and forty, all to read as follows:

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-10. Valuation of bonds.

(a) All bonds or other evidences of debt having a fixed term and rate of interest held by any insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(3) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such securities.

(4) Unless otherwise provided by valuation established or approved by the commissioner, no such security shall be carried at above the call price for the entire issue during any period within which the security may be so called.

(b) The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section: Provided, That no such method or valuation shall be inconsistent with any applicable valuation or method used by insurers in general or any such method then currently formulated or approved by the committee on valuation of securities of the national association of insurance commissioners or its successor organization.
§33-7-11. Valuation of other securities.

(a) Securities, other than those referred to in section ten of this article, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by him as representing their fair market value, all consistent with any current method for the valuation of any such security formulated or approved by the commissioner.

(b) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

(c) Stock of a subsidiary corporation of an insurer shall not be valued in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible pursuant to the provisions of this article, and article eight of this chapter, for investment of funds of the insurer directly.

(d) No valuations under this section shall be inconsistent with any applicable valuation or method then currently formulated or approved by the committee on valuation of securities of the national association of insurance commissioners or its successor organization.

§33-7-12. Valuation of real property.

(a) In the event of a default real property acquired pursuant to a mortgage loan or contract for sale shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.
(b) The value of other real property acquired or held by an insurer shall in no event be valued at more than the purchase price. Purchase price includes capitalized permanent improvements, less depreciation as allowed by the current accounting practices and procedures manuals of the national association of insurance commissioners. Real property that has been affected by permanent declines in value shall be valued at not more than market value.

ARTICLE 22. FARMERS’ MUTUAL FIRE INSURANCE COMPANIES.


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

29 impairment); article thirty-six (business transacted with
30 producer-controlled property/casualty insurer); article
31 thirty-seven (managing general agents); and article
32 thirty-nine (disclosure of material transactions); but only
33 to the extent these provisions are not inconsistent with
34 the provisions of this article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.


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

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

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

1 Every corporation defined in section two of this article
2 is hereby declared to be a scientific, nonprofit institution
3 and exempt from the payment of all property and other
4 taxes. Every corporation, to the same extent the
5 provisions are applicable to insurers transacting similar
6 kinds of insurance and not inconsistent with the
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; section thirty-four, article six (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);
article thirty-seven (managing general agents); and
article thirty-nine (disclosure of material transactions);
and no other provision of this chapter may apply to these
corporations unless specifically made applicable by the
provisions of this article. If, however, any such corpora-
tion 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); 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 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this article. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article.

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

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

(d) The provisions of section fifteen, article four (general provisions); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); section fourteen, article fifteen (individual
accident and sickness insurance); article fifteen-b
(uniform health care administration act); section three,
article sixteen (required policy provisions); section
three-f, article sixteen (treatment of temporomandibular
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-seven (insurance holding company
systems); article thirty-four-a (standards and commis-
sioner's authority for companies deemed to be in
hazardous financial condition); article thirty-five
(criminal sanctions for failure to report impairment);
article thirty-seven (managing general agents); and
article thirty-nine (disclosure of material transactions)
shall be applicable to any health maintenance organiza-
tion granted a certificate of authority under this article.

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

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-4. Registration of insurers.

(a) Every insurer which is authorized to do business in
this state and which is a member of an insurance holding
company system shall register with the commissioner,
except a foreign insurer subject to disclosure require-
ments and standards adopted by statute or regulation in
the jurisdiction of its domicile which are substantially
similar to those contained in this section. Any insurer
which is subject to registration under this section shall
register within sixty days after the effective date of this
article or fifteen days after it becomes subject to
registration, whichever is later, and annually thereafter
by the first day of June of each year for the previous
calendar year, unless the commissioner for good cause
shown extends the time for registration, and then within
such extended time. The commissioner may require any
authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement, the summary described in subsection (c) of this section, or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

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

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

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

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

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

(B) Purchases, sales or exchanges of assets;

(C) Transactions not in the ordinary course of business;

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

(E) All management and service contracts and all cost-sharing arrangements;

(F) All reinsurance agreements;

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

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

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

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

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

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

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

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

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

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

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

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

§33-27-5. Standards.

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

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

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

1. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
2. The extent to which the insurer's business is diversified among the several lines of insurance;
(3) The number and size of risks insured in each line of business;

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

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

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

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

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

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

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

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

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

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

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

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments provided such transactions are equal to or exceed: The lesser of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders; each as of the thirty-first day of December next preceding;
103 (2) Loans or extensions of credit to any person who is
104 not an affiliate, where the insurer makes such loans or
105 extensions of credit with the agreement or understand-
106 ing that the proceeds of such transactions, in whole or in
107 substantial part, are to be used to make loans or
108 extensions of credit to, purchase assets of, or to make
109 investments in, any affiliate of the insurer making such
110 loans or extensions of credit provided such transactions
111 are equal to or exceed: The lesser of one percent of the
112 insurer's admitted assets or ten percent of surplus as
113 regards policyholders; each as of the thirty-first day of
114 December next preceding;
115
116 (3) Reinsurance agreements or modifications thereto in
117 which the reinsurance premium or a change in the
118 insurer's liabilities equals or exceeds five percent of the
119 insurer's surplus as regards policyholders, as of the
120 thirty-first day of December next preceding, including
121 those agreements which may require as consideration the
122 transfer of assets from an insurer to a nonaffiliate, if an
123 agreement or understanding exists between the insurer
124 and nonaffiliate that any portion of such assets will be
125 transferred to one or more affiliates of the insurer;
126
127 (4) All management agreements, service contracts and
128 all cost-sharing arrangements; and
129
130 (5) Any material transactions, specified by rule, which
131 the commissioner determines may adversely affect the
132 interests of the insurer's policyholders.
133
134 (g) Nothing contained in subsection (h) herein shall be
135 deemed to authorize or permit any transactions which,
136 in the case of an insurer not a member of the same
137 holding company system, would be otherwise contrary to
138 law.
139
140 (h) A domestic insurer shall not enter into transactions
141 which are part of a plan or series of like transactions
142 with persons within the holding company system if the
143 purpose of those separate transactions is to avoid the
144 statutory threshold amount and thus avoid the review
that would occur otherwise. If the commissioner determines that such separate transactions were entered into over any twelve-month period for such purpose, he or she may exercise his or her authority under section nine.

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

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

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

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

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

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.

As used in this chapter, unless the context requires otherwise:

(1) “Affiliated company” means any company in the
same corporate system as a parent, an industrial insured,
or a member organization by virtue of common owner-
ship, control, operation or management.

(2) "Association" means any legal association of
individuals, corporations, partnerships or associations
that has been in continuous existence for at least one
year, the member organizations of which collectively:

(A) Own, control or hold with power to vote all of the
outstanding voting securities of an association captive
insurance company incorporated as a stock insurer; or

(B) Have complete voting control over an association
captive insurance company incorporated as a mutual
insurer.

(3) "Association captive insurance company" means
any company that insures risks of the member organiza-
tions of the association, and their affiliated companies.

(4) "Captive insurance company" means any pure
captive insurance company, association captive insur-
ance company, or industrial insured captive insurance
company formed or licensed under the provisions of this
chapter.

(5) "Commissioner" means the insurance commissioner
of West Virginia.

(6) "Industrial insured" means an insured:

(A) Who procures the insurance of any risk or risks by
use of the services of a full-time employee acting as an
insurance manager or buyer;

(B) Whose aggregate annual premiums for insurance on
all risks total at least twenty-five thousand dollars; and

(C) Who has at least twenty-five full-time employees.

(7) "Industrial insured captive insurance company"
means any company that insures risks of the industrial
insureds that comprise the industrial insured group and
their affiliated companies.
(8) "Industrial insured group" means any group that meets the following criteria:

Any group of industrial insureds that collectively:

(i) Own, control or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(ii) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer.

(9) "Member organization" means any individual, corporation, partnership or association that belongs to an association.

(10) "Parent" means a corporation, partnership or individual that directly or indirectly owns, controls or holds with power to vote more than fifty percent of the outstanding voting securities of a pure captive insurance company.

(11) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies.

§33-31-6. Corporate organization.

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

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

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

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

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

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

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

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

(3) Such other aspects as the commissioner deems advisable.

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

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

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

(h) Captive insurance companies formed under the provisions of this chapter shall have the privileges and be subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter. Captive insurance companies are subject to the provisions of article thirty-three, article thirty-four, article thirty-seven and article thirty-nine of this chapter. In the event of conflict between the provisions of said general corporation law and the provisions of this chapter, the latter shall control.
ARTICLE 32. RISK RETENTION ACT.
§33-32-3. Charter and license requirements for domestic groups.

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

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

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

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

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

ARTICLE 39. DISCLOSURE OF MATERIAL TRANSACTIONS.


(a) Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance programs unless such acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance programs have been submitted to the commissioner for review, approval or information purposes pursuant to other provisions of this chapter.

(b) The report required in subsection (a) of this section is due within fifteen days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be filed with:

(1) The insurance commissioner; and

(2) The national association of insurance commissioners.
(d) All reports obtained by or disclosed to the commissioner pursuant to this article, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected thereby, notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as he or she may deem appropriate.


(a) No acquisitions or dispositions of assets need be reported pursuant to section one of this article if the acquisitions or dispositions are not material. For purposes of this article, a material acquisition, or the aggregate of any series of acquisitions during any thirty-day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance commissioner. For purposes of this article, a material disposition, or the aggregate of any series of dispositions during any thirty-day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance commissioner.

(b) Asset acquisitions subject to this article include every purchase, lease, exchange, merger, consolidation, succession or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.
(c) Asset dispositions subject to this article include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction or other disposition.

(d) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

1. Date of the transaction;
2. Manner of acquisition or disposition;
3. Description of the assets involved;
4. Nature and amount of the consideration given or received;
5. Purpose of, or reason for, the transaction;
6. Manner by which the amount of consideration was determined;
7. Gain or loss recognized or realized as a result of the transaction; and
8. Name(s) of the person(s) from whom the assets were acquired or to whom they were disposed.

(e) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or a one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer’s reserves and such insurer ceded substantially all of its direct and assumed business to a pool. An insurer is deemed to have ceded “substantially all” of its direct and assumed business to a pool if the insurer has less than one million dollars of total direct plus assumed written premiums during a calendar year that are not subject to the pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer’s capital and surplus. If a group of insurers
Enr. Com. Sub. for S. B. No. 434] 26

59 reports on a consolidated basis as here allowed, the
60 report should identify the individual insurers that are
61 members of the group.

§33-39-3. Nonrenewals, cancellations or revisions of ceded
reinsurance programs.

1 (a) No nonrenewals, cancellations or revisions of ceded
2 reinsurance programs need be reported pursuant to
3 section one of this article if the nonrenewals, cancella-
4 tions or revisions are not material. For purposes of this
5 article, a material nonrenewal, cancellation or revision
6 is one that affects for property and casualty business,
7 including accident and health business when written as
8 such, more than fifty percent of an insurer's ceded
9 written premium, or for life, annuity and accident and
10 health business, more than fifty percent of the total
11 reserve credit taken for business ceded, on an annualized
12 basis as indicated in the insurer's most recently filed
13 statutory statement: Provided, That no filing is required
14 if the insurer's ceded written premium or the total
15 reserve credit taken for business ceded represents, on an
16 annualized basis, less than ten percent of direct plus
17 assumed written premium or ten percent of the statutory
18 reserve requirement prior to any cession, respectively.

(b) Subject to the criteria outlined above, a report is to
be filed without regard to which party has initiated the
nonrenewal, cancellation or revision of ceded reinsur-
ance whenever one or more of the following conditions
exist:

1 (1) The entire cession has been canceled, nonrenewed
or revised and ceded indemnity and loss adjustment
expense reserves after any nonrenewal, cancellation or
revision represent less than fifty percent of the compara-
ble reserves that would have been ceded had the
nonrenewal, cancellation or revision not occurred;

2 (2) An authorized or accredited reinsurer has been
replaced on an existing cession by an unauthorized
reinsurer; or
(3) Collateral requirements previously established for unauthorized reinsurers have been reduced. For example, the requirement to collateralize incurred but not reported claim reserves has been waived with respect to one or more unauthorized reinsurers newly participating in an existing cession.

(4) Subject to the materiality criteria, for purposes of subdivisions (2) and (3) above, a report shall be filed if the result of the revision affects more than ten percent of the cession.

(c) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of a ceded reinsurance program:

(1) Effective date of the nonrenewal, cancellation or revision;

(2) The description of the transaction with an identification of the initiator thereof;

(3) Purpose of, or reason for, the transaction; and

(4) If applicable, the identity of the replacement reinsurers.

(d) Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or a one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to a pool. An insurer is deemed to have ceded "substantially all" of its direct and assumed business to a pool if the insurer has less than one million dollars of total direct plus assumed written premiums during a calendar year that are not subject to the pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus. If a

1 This article shall take effect on the first day of
2 January, one thousand nine hundred ninety-six.

ARTICLE 40. RISK BASED CAPITAL FOR LIFE AND/OR HEALTH INSURERS.

§33-40-1. Definitions.

(a) “Adjusted risk based capital report” means a risk
1 based capital report which has been adjusted by the
2 commissioner in accordance with subsection (c), section
3 two of this article.

(b) “Corrective order” means an order issued by the
1 commissioner specifying corrective actions which the
2 commissioner has determined are required.

(c) “Domestic insurer” means any life and/or health
1 insurance company organized in this state pursuant to
2 article five of this chapter.

(d) “Foreign insurer” means any life and/or health
1 insurance company which is licensed to do business in
2 this state pursuant to article three of this chapter but is
3 not domiciled in this state.

(e) “Negative trend” means a negative trend over a
1 period of time, as determined in accordance with the
2 trend test calculation included in the risk based capital
3 instructions defined in subsection (f) of this section.

(f) “Risk based capital instructions” means the risk
1 based capital report including risk based capital
2 instructions, as amended and adopted by the national
3 association of insurance commissioners.

(g) “Risk based capital level” is an insurer’s company
1 action level, regulatory action level, authorized control
2 level or mandatory control level where:
(1) "Authorized control level" is the amount calculated by applying the risk based capital formula in accordance with the risk based capital instructions;

(2) "Company action level" is the risk based capital amount equal to the product of multiplying the authorized control level by two;

(3) "Mandatory control level" is the risk based capital amount equal to the product of multiplying the authorized control level by seven tenths;

(4) "Regulatory action level" is the risk based capital amount equal to the product of multiplying the authorized control level by one and one-half.

(h) A "risk based capital plan" is a comprehensive financial plan containing the elements specified in subsection (b), section three of this article. If the commissioner rejects the risk based capital plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised risk based capital plan".

(i) A "risk based capital report" is the report required by section two of this article.

(j) "Total adjusted capital" is the sum of:

   (1) An insurer's statutory capital and surplus; and

   (2) Such other items, if any, as the risk based capital instructions may provide.

§33-40-2. Risk based capital reports.

(a) Every domestic insurer shall annually on or before the first day of March, prepare and file with the commissioner a report of its risk based capital levels for the year ended the thirty-first day of December next preceding. The risk based capital report shall be in a form containing such information as is required by the risk based capital instructions. In addition, every domestic insurer shall file its risk based capital report:
(1) With the national association of insurance commissioners in accordance with the risk based capital instructions; and

(2) With the insurance commissioner of any state in which the insurer is authorized to do business, and that insurance commissioner has notified the insurer of its request in writing. When so requested, the insurer shall file its risk based capital report:

(i) Fifteen days from the receipt of notice to file its risk based capital report with that state; or

(ii) If the request is received after the thirty-first day of December next preceding but prior to the first day of March, on or before the fifteenth day of March.

(b) An insurer’s risk based capital shall be determined in accordance with the formula set forth in the risk based capital instructions. The formula shall take into account and may adjust for the covariance between:

(1) The risk with respect to the insurer’s assets;

(2) The risk of adverse insurance experience with respect to the insurer’s liabilities and obligations;

(3) The interest rate risk with respect to the insurer’s business; and

(4) All other business risks and such other relevant risks as are set forth in the risk based capital instructions.

The above risks shall be determined in each case by applying the factors in the manner set forth in the risk based capital instructions.

(c) If a domestic insurer files a risk based capital report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the risk based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A risk based capital report so adjusted is referred to as an “adjusted
risk based capital report”.

§33-40-3. Company action level event.

1 (a) A “company action level event” is any of the following events:

2 (1) The filing of a risk based capital report by an insurer which indicates that:

3 (A) The insurer’s total adjusted capital is greater than or equal to its regulatory action level but less than its company action level; or

4 (B) The insurer has total adjusted capital which is greater than or equal to its company action level but less than the product of multiplying its authorized control level by two and one-half and has a negative trend;

5 (2) Notification from the commissioner of an adjusted risk based capital report that indicates the event in paragraph (A) or (B), subdivision (1) of this subsection: Provided, That the insurer does not challenge the adjusted risk based capital report pursuant to section seven of this article; or

6 (3) If the insurer challenges an adjusted risk based capital report that indicates the event in paragraph (A) or (B), subdivision (1) of this subsection pursuant to section seven of this article, notification from the commissioner of rejection of the insurer’s challenge.

7 (b) In the event of a company action level event, the insurer shall prepare and file with the commissioner a comprehensive financial plan which shall:

8 (1) Identify the internal conditions of the insurer which contribute to the company action level event;

9 (2) Contain proposals of corrective actions which the insurer intends to take that are expected to result in the elimination of the company action level event;

10 (3) Provide separate projections of the insurer’s financial results in the current year and at least the four
33 succeeding years, one projection prepared giving effect
34 to the proposed corrective actions and one projection not
35 giving effect to the proposed corrective actions. The
36 projections shall include estimates of statutory operating
37 income, net income, capital and/or surplus. The
38 projections for both new and renewal business may
39 include separate projections for each major line of
40 business and separately identify each significant income,
41 expense and benefit component;
42 (4) Identify the key assumptions impacting the in-
43 surer's projections and the sensitivity of the projections
44 to the assumptions; and
45 (5) Identify the quality of, and problems associated
46 with, the insurer's business, including, but not limited to,
47 its assets, anticipated business growth and associated
48 surplus strain, extraordinary exposure to risk, mix of
49 business and use of reinsurance in each case, if any.
50 (c) The risk based capital plan shall be filed:
51 (1) Within forty-five days of the company action level
52 event; or
53 (2) If the insurer challenges an adjusted risk based
54 capital report pursuant to section seven of this article,
55 within forty-five days after notification to the insurer
56 that the commissioner has, after a hearing, rejected the
57 insurer's challenge.
58 (d) Within sixty days after the filing of a risk based
59 capital plan, the commissioner shall notify the insurer
60 whether the risk based capital plan shall be implemented
61 or that it is unsatisfactory. If the commissioner deter-
62 mines the risk based capital plan is unsatisfactory, the
63 notification to the insurer shall set forth the reasons for
64 the determination and may set forth proposed revisions
65 which will render the risk based capital plan satisfac-
66 tory. Upon notification from the commissioner, the
67 insurer shall prepare a revised risk based capital plan,
68 which may incorporate by reference any revisions
69 proposed by the commissioner. The revised risk based
(e) In the event of a notification by the commissioner to an insurer that the insurer's risk based capital plan or revised risk based capital plan is unsatisfactory, the commissioner may specify in the notification that the notification constitutes a regulatory action level event. Such notification is subject to the insurer's right to a hearing pursuant to section seven of this article.

(f) Every domestic insurer that files a risk based capital plan or revised risk based capital plan with the commissioner shall file a copy of the risk based capital plan or revised risk based capital plan with the insurance commissioner of any state in which the insurer is authorized to do business if:

1. Such state has a risk based capital provision substantially similar to the provision of subsection (a), section eight of this article; and
2. The insurance commissioner of that state has notified the insurer of its request for the filing in writing. The insurer shall file a copy of the risk based capital plan or revised risk based capital plan in that state on or before the later of:

   A. Fifteen days after the receipt of notice to file a copy of its risk based capital plan or revised risk based capital plan with that state; or
   B. The date of which the risk based capital plan or revised risk based capital plan is filed under subsection (c), section four of this article.
§33-40-4. Regulatory action level event.

(a) A "regulatory action level event", with respect to any insurer, is any of the following events:

(1) The filing of a risk based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level but less than its regulatory action level;

(2) Notification from the commissioner of an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection: Provided, That the insurer does not challenge the adjusted risk based capital report pursuant to section seven of this article;

(3) If the insurer challenges an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection pursuant to section seven of this article, notification from the commissioner that the commissioner has, after a hearing, rejected the insurer's challenge;

(4) The failure of the insurer to file a risk based capital report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(5) The failure of the insurer to file a risk based capital plan with the commissioner within the time period set forth in subsection (c), section three of this article;

(6) Notification from the commissioner that:

(A) The risk based capital plan or revised risk based capital plan filed by the insurer is unsatisfactory; and

(B) Such notification constitutes a regulatory action level event with respect to the insurer: Provided, That the insurer has not challenged the determination pursuant to section seven of this article;

(7) If the insurer challenges a determination by the commissioner under subdivision (6) of this subsection
pursuant to section seven of this article, notification
from the commissioner that the commissioner has, after
a hearing, rejected the insurer's challenge;

(8) Notification from the commissioner that the insurer
has failed to adhere to its risk based capital plan or
revised risk based capital plan. The commissioner must
determine that the failure to adhere has a substantial
adverse effect or the ability of the insurer to eliminate
the regulatory action level event in accordance with its
risk based capital plan or revised risk based capital plan
and state so in the notification. A determination
challenged pursuant to section seven of this article is not
a regulatory action level event; or

(9) If the insurer challenges a determination by the
commissioner under subdivision (8) of this subsection
pursuant to section seven of this article, notification
from the commissioner that the commissioner has, after
a hearing, rejected the insurer's challenge.

(b) In the event of a regulatory action level event the
commissioner shall:

(1) Require the insurer to prepare and file a risk based
capital plan or, if applicable, a revised risk based capital
plan;

(2) Perform such examination or analysis as the
commissioner deems necessary of the assets, liabilities
and operations of the insurer including a review of its
risk based capital plan or revised risk based capital plan;
and

(3) Subsequent to the examination or analysis, issue an
order specifying such corrective actions as the commis-
ioner shall determine are required.

(c) In determining corrective actions, the commissioner
may take into account such factors as are deemed
relevant with respect to the insurer based upon the
commissioner's examination or analysis of the assets,
liabilities and operations of the insurer, including, but

not limited to, the results of any sensitivity tests undertaken pursuant to the risk based capital instructions. The risk based capital plan or revised risk based capital plan shall be filed:

(1) Within forty-five days after the occurrence of the regulatory action level event;

(2) If the insurer challenges an adjusted risk based capital report pursuant to section seven of this article and the challenge is not in the judgment of the commissioner frivolous, within forty-five days after the notification from the commissioner that the commissioner has, after a hearing, rejected the insurer's challenge; or

(3) If the insurer challenges a revised risk based capital plan pursuant to section seven of this article, within forty-five days after notification from the commissioner that the commissioner has, after a hearing, rejected the insurer's challenge.

(d) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's risk based capital plan or revised risk based capital plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to consultants shall be borne by the insurer or such other party as directed by the commissioner.

§33-40-5. Authorized control level event.

(a) An "authorized control level event" is any of the following events:

(1) The filing of a risk based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level but less than its authorized control level;

(2) Notification from the commissioner of an adjusted
risk based capital report that indicates the event in subdivision (1) of this subsection: Provided, That the insurer does not challenge the adjusted risk based capital report pursuant to section seven of this article;

(3) If the insurer challenges an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection pursuant to section seven of this article, notification from the commissioner that the commissioner has, after a hearing, rejected the insurer’s challenge;

(4) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order: Provided, That the insurer has not challenged the corrective order pursuant to section seven of this article; or

(5) If the insurer has challenged a corrective order pursuant to section seven of this article and the commissioner has, after a hearing, rejected the insurer’s challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(b) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(1) Take such actions as are required by subsection (b), section four of this article when a regulatory action level event has occurred; or

(2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control pursuant to article ten of this chapter. In the event the commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the commissioner to take action pursuant to said article, and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in said
article. In the event the commissioner takes actions under this subdivision pursuant to an adjusted risk based capital report, the insurer shall be entitled to such protections as are afforded to insurers pursuant to the provisions of article ten of this chapter pertaining to summary proceedings.

§33-40-6. Mandatory control level event.

(a) A “mandatory control level event” is any of the following events:

(1) The filing of a risk based capital report which indicates that the insurer’s total adjusted capital is less than its mandatory control level;

(2) Notification from the commissioner of an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection: Provided, That the insurer does not challenge the adjusted risk based capital report pursuant to section seven of this article; or

(3) If the insurer challenges an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection pursuant to section seven of this article, notification from the commissioner that the commissioner has, after a hearing, rejected the insurer’s challenge.

(b) In the event of a mandatory control level event, the commissioner shall take actions as are necessary to cause the insurer to be placed under regulatory control pursuant to article ten of this chapter. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action pursuant to said article, and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in said article. In the event the commissioner takes actions pursuant to an adjusted risk based capital report, the insurer shall be entitled to such protections as are afforded to insurers pursuant to the provisions of said article pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may
forego action for up to ninety days after the mandatory control level event if he or she finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety day period.


An insurer shall have the right to a departmental hearing, on a record, at which the insurer may challenge any determination or action of the commissioner made pursuant to the provisions of this article. The insurer shall notify the commissioner of its request for a hearing within five days after receiving from the commissioner:

(a) Notification of an adjusted risk based capital report; or

(b) Notification that:

(1) The insurer's risk based capital plan or revised risk based capital plan is unsatisfactory; and

(2) Such notification constitutes a regulatory action level event with respect to such insurer; or

(c) Notification that the insurer has failed to adhere to its risk based capital plan or revised risk based capital plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk based capital plan or revised risk based capital plan; or

(d) Notification of a corrective order with respect to the insurer.

Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, no less than fifteen nor more than forty-five days after the date of the insurer's request.


(a) All risk based capital reports, to the extent the information therein is not required to be set forth in a
publicly available annual statement schedule, and risk
based capital plans, including the results or report of any
examination or analysis of an insurer performed
pursuant hereto and any corrective order issued by the
commissioner pursuant to examination or analysis, with
respect to any domestic insurer or foreign insurer which
are filed with the commissioner constitute information
that might be damaging to the insurer if made available
to its competitors and therefore shall be kept confiden-
tial by the commissioner. This information shall not be
made public and/or be subject to subpoena, other than
by the commissioner and then only for the purpose of
enforcement actions taken by the commissioner pursuant
to this article or any other provision of the insurance
laws of this state. The information required by this
section is specifically exempt from the requirements of
chapter twenty-nine-b of this code.

(b) It is the judgment of the Legislature that the
comparison of an insurer's total adjusted capital to any
of its risk based capital levels is a regulatory tool which
may indicate the need for possible corrective action with
respect to the insurer and is not intended as a means to
rank insurers generally. Therefore, except as otherwise
required under the provisions of this article, the making,
publishing, disseminating, circulating or placing before
the public, or causing, directly or indirectly to be made,
published, disseminated, circulated or placed before the
public, in a newspaper, magazine or other publication, or
in the form of a notice, circular, pamphlet, letter or
poster, or over any radio or television station, or in any
other way, an advertisement, announcement or state-
ment containing an assertion, representation or
statement with regard to the risk based capital levels of
any insurer, or of any component derived in the
calculation, by any insurer, agent, broker or other person
engaged in any manner in the insurance business would
be misleading and is therefore prohibited: Provided,
That if any materially false statement with respect to the
comparison regarding an insurer's total adjusted capital
to its risk based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurers’ risk based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.


1 The provisions of this article are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, article ten of this chapter.

§33-40-10. Foreign insurers.

1 (a) Any licensed foreign insurer shall, upon the written request of the commissioner, file with the commissioner a risk based capital report for the year ending the thirty-first day of December next preceding:

(1) Fifteen days from the receipt of notice to file its risk based capital report; or

(2) If the request is received after the thirty-first day of December next preceding but prior to the first day of March, on or before the fifteenth day of March.

Any licensed foreign insurer shall, at the written request of the commissioner, promptly file with the commissioner a copy of any risk based capital plan that is filed with the insurance commissioner of any other state.

(b) The commissioner may require any licensed foreign insurer to file a risk based capital plan in the event of a company action level event, a regulatory action level event or an authorized control level event when:

(1) The event is determined pursuant to the risk based
capital statute applicable in the insurer’s state of domicile or as determined pursuant to the provisions of this article if there is no risk based capital statute in force in that state; and

(2) The insurance commissioner of the state of domicile fails to require the insurer to file a risk based capital plan pursuant to the risk based capital statute in force in that state or under the provisions of section three of this article if there is no risk based capital statute in force in that state.

In such event, the failure of the licensed foreign insurer to file a risk based capital plan with the commissioner shall be grounds to order the insurer to cease and desist writing new insurance business in this state.

(c) In the event of a mandatory control level event with respect to any licensed foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the circuit court of Kanawha county permitted pursuant to the provisions of article ten of this chapter with respect to the liquidation of property of foreign insurers found in this state and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.


If any provision of this article, or the application thereof to any person or circumstances, is held invalid, such determination shall not affect the provisions or applications of this article which can be given effect without the invalid provision or application and to that end the provisions of this article are severable.


All notices from the commissioner to an insurer which may result in regulatory action hereunder shall be
subject to and deemed effective pursuant to the provision of section twelve, article two of this chapter.


This article shall take effect on the first day of January, one thousand nine hundred ninety-six.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ... ... this the .........

day of ... ... ........., 1994.

Governor
PRESENTED TO THE
GOVERNOR
Date 3-30-94
Time 4:33 p.m.