

HB 2505

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

HOUSE BILL No. 2505

(By Delegates Adkins, Dallyger + Nesbitt)



Passed March 2, 1995

In Effect January 1, 1996 ~~Passage~~



ENROLLED

H. B. 2505

(BY DELEGATES ADKINS, GALLAGHER AND NESBITT)

[Passed March 2, 1995; in effect January 1, 1996.]

AN ACT to amend article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen; to amend and reenact section nine, article seven; section two, article twenty-two; and to amend and reenact article forty, all of said chapter, all relating to insurance; insurance commissioner; confidentiality of information; standard valuation for life insurance policies; farmers' mutual fire insurance companies, applicability of other provisions; risk based capital for insurers; definitions; risk based capital reports; company action level event; regulatory action level event; authorized control level event; mandatory control level event; hearings; confidentiality, prohibition on announcements; prohibition on ratemaking; supplemental provisions, rules, exemptions; foreign insurers; immunity; severability clause; and effective date.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen; that section nine, article seven; section two, article

twenty-two of said chapter be amended and reenacted; and that article forty of said chapter be amended and reenacted, all to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-19. Confidentiality of information.

1 In order to assist the commissioner in the regulation of
2 insurers in this state, it is the duty of the commissioner to
3 maintain, as confidential, any documents or information
4 received from the national association of insurance
5 commissioners or insurance departments of other states
6 which is confidential in such other jurisdictions. It is
7 within the power of the commissioner to share in-
8 formation, including otherwise confidential information,
9 with the national association of insurance commissioners
10 or insurance departments of other states: *Provided*, That
11 such other jurisdictions agree to maintain the same level of
12 confidentiality as is available under this statute.

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard valuation law.

1 (a) *Title.* — This section shall be known as the
2 standard valuation law.

3 (b) *Reserve valuation.* — The commissioner shall
4 annually value, or cause to be valued, the reserve liabilities
5 (hereinafter called reserves) for all outstanding life
6 insurance policies and annuity and pure endowment
7 contracts of every life insurance company doing business
8 in this state, and may certify the amount of any such
9 reserves specifying the mortality table or tables, rate or
10 rates of interest and methods (net level premium method
11 or other) used in the calculation of such reserves. In
12 calculating such reserves, he may use group methods and
13 approximate averages for fractions of a year or otherwise.
14 In lieu of the valuation of the reserves herein required of
15 any foreign or alien company, he may accept any
16 valuation made, or caused to be made, by the insurance
17 supervisory official of any state or other jurisdiction when

18 such valuation complies with the minimum standard
19 herein provided and if the official of such state or
20 jurisdiction accepts as sufficient and for all valid legal
21 purposes the certificate of valuation of the commissioner
22 when such certificate states the valuation to have been
23 made in a specified manner according to which the
24 aggregate reserves would be at least as large as if they had
25 been computed in the manner prescribed by the law of
26 that state or jurisdiction.

27 (c) *Actuarial opinion of reserves.* — This subsection
28 shall become operative on first day of January, one
29 thousand nine hundred ninety-six.

30 (1) *General.* — Every life insurance company doing
31 business in this state shall annually submit the opinion of a
32 qualified actuary as to whether the reserves and related
33 actuarial items held in support of the policies and
34 contracts specified by the commissioner by regulation are
35 computed appropriately, are based on assumptions which
36 satisfy contractual provisions, are consistent with prior
37 reported amounts and comply with applicable laws of this
38 state. The commissioner by regulation shall define the
39 specifics of this opinion and add any other items deemed
40 to be necessary to its scope.

41 (2) *Actuarial analysis of reserves and assets*
42 *supporting such reserves.* —

43 (A) Every life insurance company, except as
44 exempted by or pursuant to regulation, shall also annually
45 include in the opinion required by subdivision (1) of this
46 subsection, an opinion of the same qualified actuary as to
47 whether the reserves and related actuarial items held in
48 support of the policies and contracts specified by the
49 commissioner by regulation, when considered in light of
50 the assets held by the company with respect to the reserves
51 and related actuarial items, including, but not limited to,
52 the investment earnings on the assets and the
53 considerations anticipated to be received and retained
54 under the policies and contracts, make adequate provision
55 for the company's obligations under the policies and

56 contracts, including, but not limited to, the benefits under
57 and expenses associated with the policies and contracts.

58 (B) The commissioner may provide by regulation for
59 a transition period for establishing any higher reserves
60 which the qualified actuary may deem necessary in order
61 to render the opinion required by this subsection.

62 (3) *Requirement for opinion under subdivision (2).* —
63 Each opinion required by subdivision (2) of this
64 subsection shall be governed by the following provisions:

65 (A) A memorandum in form and substance acceptable
66 to the commissioner as specified by regulation shall be
67 prepared to support each actuarial opinion.

68 (B) If the insurance company fails to provide a
69 supporting memorandum at the request of the
70 commissioner within a period specified by regulation or
71 the commissioner determines that the supporting
72 memorandum provided by the insurance company fails to
73 meet the standards prescribed by the regulations or is
74 otherwise unacceptable to the commissioner, the
75 commissioner may engage a qualified actuary at the
76 expense of the company to review the opinion and the
77 basis for the opinion and prepare such supporting
78 memorandum as is required by the commissioner.

79 (4) *Requirement for all opinions.* — Every opinion
80 shall be governed by the following provisions:

81 (A) The opinion shall be submitted with the annual
82 statement reflecting the valuation of such reserve liabilities
83 for each year ending on or after the thirty-first day of
84 December, one thousand nine hundred ninety-five.

85 (B) The opinion shall apply to all business in force,
86 including individual and group health insurance plans, in
87 form and substance acceptable to the commissioner as
88 specified by regulation.

89 (C) The opinion shall be based on standards adopted
90 from time to time by the actuarial standards board and on
91 such additional standards as the commissioner may by

92 regulation prescribe.

93 (D) In the case of an opinion required to be submitted
94 by a foreign or alien company, the commissioner may
95 accept the opinion filed by that company with the
96 insurance supervisory official of another state if the
97 commissioner determines that the opinion reasonably
98 meets the requirements applicable to a company
99 domiciled in this state.

100 (E) For the purposes of this section, "qualified
101 actuary" means a member in good standing of the
102 American academy of actuaries who meets the
103 requirements set forth in such regulations.

104 (F) Except in cases of fraud or willful misconduct, the
105 qualified actuary shall not be liable for damages to any
106 person (other than the insurance company and the
107 commissioner) for any act, error, omission, decision or
108 conduct with respect to the actuary's opinion.

109 (G) Disciplinary action by the commissioner against
110 the company or the qualified actuary shall be defined in
111 regulations by the commissioner.

112 (H) Any memorandum in support of the opinion, and
113 any other material provided by the company to the
114 commissioner in connection therewith, shall be kept
115 confidential by the commissioner and shall not be made
116 public and shall not be subject to subpoena, other than for
117 the purpose of defending an action seeking damages from
118 any person by reason of any action required by this
119 section or by regulations promulgated hereunder:
120 *Provided*, That the memorandum or other material may
121 otherwise be released by the commissioner: (i) With the
122 written consent of the company; or (ii) to the American
123 academy of actuaries upon request stating that the
124 memorandum or other material is required for the
125 purpose of professional disciplinary proceedings and
126 setting forth procedures satisfactory to the commissioner
127 for preserving the confidentiality of the memorandum or
128 other material. Once any portion of the confidential

129 memorandum is cited by the company in its marketing or
130 is cited before any governmental agency other than a state
131 insurance department or is released by the company to the
132 news media, all portions of the confidential memorandum
133 shall be no longer confidential.

134 (d) *Computation of minimum standards.* — Except as
135 otherwise provided in subsections (e),(f) and (m) of this
136 section, the minimum standard for the valuation of all
137 such policies and contracts issued prior to the effective
138 date of this section shall be that provided by the laws in
139 effect immediately prior to such date. Except as otherwise
140 provided in subsections (e), (f) and (m) of this section, the
141 minimum standard for the valuation of all such policies
142 and contracts issued on or after the effective date of this
143 section shall be the commissioners reserve valuation
144 methods defined in subsections (g), (h), (k) and (m) of
145 this section, three and one-half percent interest, or in the
146 case of life insurance policies and contracts, other than
147 annuity and pure endowment contracts, issued on or after
148 the first day of June, one thousand nine hundred
149 seventy-four, four percent interest for such policies issued
150 prior to the sixth day of April, one thousand nine hundred
151 seventy-seven, five and one-half percent interest for single
152 premium life insurance policies and four and one-half
153 percent interest for all other such policies issued on and
154 after the sixth day of April, one thousand nine hundred
155 seventy-seven, and the following tables:

156 (1) For all ordinary policies of life insurance issued
157 on the standard basis, excluding any disability and
158 accidental death benefits in such policies: The commis-
159 sioners 1941 standard ordinary mortality table for such
160 policies issued prior to the operative date of subsection
161 (4a), section thirty, article thirteen of this chapter, the
162 commissioners 1958 standard ordinary mortality table for
163 such policies issued on or after the operative date of said
164 subsection, and prior to the operative date of subsection
165 (4c) of said section: *Provided*, That for any category of
166 such policies issued on female risks, all modified net
167 premiums and present values referred to in this section

168 may be calculated according to an age not more than six
169 years younger than the actual age of the insured; and for
170 such policies issued on or after the operative date of
171 subsection (4c), section thirty, article thirteen of this
172 chapter: (i) The commissioners 1980 standard ordinary
173 mortality table; or (ii) at the election of the company for
174 any one or more specified plans of life insurance, the
175 commissioners 1980 standard ordinary mortality table
176 with ten-year select mortality factors; or (iii) any ordinary
177 mortality table, adopted after the year one thousand nine
178 hundred eighty by the national association of insurance
179 commissioners, that is approved by regulation promul-
180 gated by the commissioner for use in determining the
181 minimum standard of valuation for such policies.

182 (2) For all industrial life insurance policies issued on
183 the standard basis, excluding any disability and accidental
184 death benefits in such policies: The 1941 standard
185 industrial mortality table for such policies issued prior to
186 the operative date of subsection (4b), section thirty, article
187 thirteen of this chapter, and for such policies issued on or
188 after such operative date, the commissioners 1961
189 standard industrial mortality table or any industrial
190 mortality table, adopted after the year one thousand nine
191 hundred eighty by the national association of insurance
192 commissioners, that is approved by regulation pro-
193 mulgated by the commissioner for use in determining the
194 minimum standard of valuation for such policies.

195 (3) For individual annuity and pure endowment
196 contracts, excluding any disability and accidental death
197 benefits in such policies: The 1937 standard annuity
198 mortality table, or at the option of the company, the
199 annuity mortality table for 1949, ultimate, or any
200 modification of either of these tables approved by the
201 commissioner.

202 (4) For group annuity and pure endowment contracts,
203 excluding any disability and accidental death benefits in
204 such policies: The group annuity mortality table for 1951,
205 any modification of such table approved by the

206 commissioner, or at the option of the company, any of the
207 tables or modifications of tables specified for individual
208 annuity and pure endowment contracts.

209 (5) For total and permanent disability benefits in or
210 supplementary to ordinary policies or contracts: For
211 policies or contracts issued on or after the first day of
212 January, one thousand nine hundred sixty-six, the tables
213 of period two disablement rates and the 1930 to 1950
214 termination rates of the 1952 disability study of the
215 society of actuaries, with due regard to the type of benefit
216 or any tables of disablement rates and termination rates
217 adopted after the year one thousand nine hundred eighty
218 by the national association of insurance commissioners,
219 that are approved by regulation promulgated by the
220 commissioner for use in determining the minimum
221 standard of valuation for such policies; for policies or
222 contracts issued on or after the first day of January, one
223 thousand nine hundred sixty-one, and prior to the first
224 day of January, one thousand nine hundred sixty-six,
225 either such tables or, at the option of the company, the
226 Class (3) disability table (1926); and for policies issued
227 prior to the first day of January, one thousand nine
228 hundred sixty-one, the Class (3) disability table (1926).
229 Any such table shall, for active lives, be combined with a
230 mortality table permitted for calculating the reserves for
231 life insurance policies.

232 (6) For accidental death benefits in or supplementary
233 to policies issued on or after the first day of January, one
234 thousand nine hundred sixty-six, the 1959 accidental
235 death benefits table or any accidental death benefits table
236 adopted after the year one thousand nine hundred eighty
237 by the national association of insurance commissioners,
238 that is approved by regulation promulgated by the
239 commissioner for use in determining the minimum
240 standard of valuation for such policies, for policies issued
241 on or after the first day of January, one thousand nine
242 hundred sixty-one, and prior to the first day of January,
243 one thousand nine hundred sixty-six, either such table or,
244 at the option of the company, the inter-company double

245 indemnity mortality table; and for policies issued prior to
246 the first day of January, one thousand nine hundred
247 sixty-one, the inter-company double indemnity mortality
248 table. Either table shall be combined with a mortality table
249 for calculating the reserves for life insurance policies.

250 (7) For group life insurance, life insurance issued on
251 the substandard basis and other special benefits: Such
252 tables as may be approved by the commissioner.

253 (e) *Computation of minimum standard for annuities.*
254 — Except as provided in subsection (f), the minimum
255 standard for the valuation of all individual annuity and
256 pure endowment contracts issued on or after the operative
257 date of this subsection, as defined herein, and for all
258 annuities and pure endowments purchased on or after
259 such operative date under group annuity and pure
260 endowment contracts, shall be the commissioner's reserve
261 valuation methods defined in subsections (g) and (h) and
262 the following tables and interest rates:

263 (1) For individual annuity and pure endowment
264 contracts issued prior to the sixth day of April, one
265 thousand nine hundred seventy-seven, excluding any
266 disability and accidental death benefits in such contracts:
267 The 1971 individual annuity mortality table, or any
268 modification of this table approved by the commissioner,
269 and six percent interest for single premium immediate
270 annuity contracts and four percent interest for all other
271 individual annuity and pure endowment contracts;

272 (2) For individual single premium immediate annuity
273 contracts issued on or after the sixth day of April, one
274 thousand nine hundred seventy-seven, excluding any
275 disability and accidental death benefits in such contracts:
276 The 1971 individual annuity mortality table or any
277 individual annuity mortality table, adopted after the year
278 one thousand nine hundred eighty by the national
279 association of insurance commissioners that is approved
280 by regulation promulgated by the commissioner for use in
281 determining the minimum standard of valuation for such
282 contracts, or any modification of these tables approved by

283 the commissioner, and seven and one-half percent interest;

284 (3) For individual annuity and pure endowment
285 contracts issued on or after the sixth day of April, one
286 thousand nine hundred seventy-seven, other than single
287 premium immediate annuity contracts, excluding any
288 disability and accidental death benefits in such contracts:
289 The 1971 individual annuity mortality table or any
290 individual annuity mortality table adopted after the year
291 one thousand nine hundred eighty by the national
292 association of insurance commissioners, that is approved
293 by regulation promulgated by the commissioner for use in
294 determining the minimum standard of valuation for such
295 contracts, or any modification of these tables approved by
296 the commissioner, and five and one-half percent interest
297 for single premium deferred annuity and pure endowment
298 contracts and four and one-half percent interest for all
299 other such individual annuity and pure endowment
300 contracts;

301 (4) For all annuities and pure endowments purchased
302 prior to the sixth day of April, one thousand nine hundred
303 seventy-seven, under group annuity and pure endowment
304 contracts, excluding any disability and accidental death
305 benefits purchased under such contracts: The 1971 group
306 annuity mortality table, or any modification of this table
307 approved by the commissioner, and six percent interest;

308 (5) For all annuities and pure endowments purchased
309 on or after the sixth day of April, one thousand nine
310 hundred seventy-seven, under group annuity and pure
311 endowment contracts, excluding any disability and
312 accidental death benefits purchased under such contracts:
313 The 1971 group annuity mortality table, or any group
314 annuity mortality table adopted after the year one
315 thousand nine hundred eighty by the national association
316 of insurance commissioners, that is approved by regula-
317 tion promulgated by the commissioner for use in
318 determining the minimum standard of valuation for such
319 annuities and pure endowments, or any modification of
320 these tables approved by the commissioner, and seven and

321 one-half percent interest.

322 After the third day of June, one thousand nine
323 hundred seventy-four, any company may file with the
324 commissioner a written notice of its election to comply
325 with the provisions of this subsection after a specified date
326 before the first day of January, one thousand nine
327 hundred seventy-nine, which shall be the operative date of
328 this subsection for such company, provided, if a company
329 makes no such election, the operative date of this section
330 for such company shall be the first day of January, one
331 thousand nine hundred seventy-nine.

332 *(f) Computation of minimum standard by calendar*
333 *year of issue. —*

334 *(1) Applicability of this section. —* The interest rates
335 used in determining the minimum standard for the
336 valuation of:

337 (A) All life insurance policies issued in a particular
338 calendar year, on or after the operative date of subsection
339 (4c), section thirty, article thirteen of this chapter as
340 amended;

341 (B) All individual annuity and pure endowment
342 contracts issued in a particular calendar year on or after
343 the first day of January, one thousand nine hundred
344 eighty-two;

345 (C) All annuities and pure endowments purchased in a
346 particular calendar year on or after the first day of
347 January, one thousand nine hundred eighty-two, under
348 group annuity and pure endowment contracts; and

349 (D) The net increase, if any, in a particular calendar
350 year after the first day of January, one thousand nine
351 hundred eighty-two, in amounts held under guaranteed
352 interest contracts; shall be the calendar year statutory
353 valuation interest rates as defined in this subsection.

354 *(2) Calendar year statutory valuation interest rates. —*

355 (A) The calendar year statutory valuation interest

356 rates, I, shall be determined as follows and the results
357 rounded to the nearer one-quarter of one percent:

358 (i) For life insurance,

$$359 \quad I = .03 + W(R_1 - .03) + W/2(R_2 - .09);$$

360 (ii) For single premium immediate annuities and for
361 annuity benefits involving life contingencies arising from
362 other annuities with cash settlement options and from
363 guaranteed interest contracts with cash settlement options,

$$364 \quad I = .03 + W(R - .03)$$

365 where R_1 is the lesser of R and $.09$,

366 R_2 is the greater of R and $.09$,

367 R is the reference interest rate defined in this
368 subsection, and W is the weighting factor defined in this
369 section;

370 (iii) For other annuities with cash settlement options
371 and guaranteed interest contracts with cash settlement
372 options, valued on an issue year basis, except as stated in
373 subparagraph (ii) of this paragraph, the formula for life
374 insurance stated in subparagraph (i) of this paragraph
375 shall apply to annuities and guaranteed interest contracts
376 with guarantee durations in excess of ten years and the
377 formula for single premium immediate annuities stated in
378 subparagraph (ii) of this paragraph shall apply to
379 annuities and guaranteed interest contracts with guarantee
380 duration of ten years or less;

381 (iv) For other annuities with no cash settlement
382 options and for guaranteed interest contracts with no cash
383 settlement options, the formula for single premium
384 immediate annuities stated in subparagraph (ii) of this
385 paragraph shall apply;

386 (v) For other annuities with cash settlement options
387 and guaranteed interest contracts with cash settlement
388 options, valued on a change in fund basis, the formula for
389 single premium immediate annuities stated in

390 subparagraph (ii) of this paragraph shall apply.

391 (B) However, if the calendar year statutory valuation
 392 interest rate for any life insurance policies issued in any
 393 calendar year determined without reference to this
 394 sentence differs from the corresponding actual rate for
 395 similar policies issued in the immediately preceding
 396 calendar year by less than one half of one percent the
 397 calendar year statutory valuation interest rate for such life
 398 insurance policies shall be equal to the corresponding
 399 actual rate for the immediately preceding calendar year.
 400 For purposes of applying the immediately preceding
 401 sentence, the calendar year statutory valuation interest rate
 402 for life insurance policies issued in a calendar year shall
 403 be determined for the year one thousand nine hundred
 404 eighty (using the reference interest rate defined for the
 405 year one thousand nine hundred seventy-nine) and shall
 406 be determined for each subsequent calendar year
 407 regardless of when subsection (4c), section thirty, article
 408 thirteen of this chapter, as amended, becomes operative.

409 (3) *Weighting factors.* —

410 (A) The weighting factors referred to in the formulas
 411 stated above are given in the following tables:

412 (i) Weighting Factors for Life Insurance:

413 Guarantee	414 Weighting
414 Duration	415 Factors
415 (Years)	
416 10 or less	.50
417 More than 10, but not more than 20	.45
418 More than 20	.35

419 For life insurance, the guarantee duration is the
 420 maximum number of years the life insurance can remain
 421 in force on a basis guaranteed in the policy or under
 422 options to convert to plans of life insurance with premium
 423 rates or nonforfeiture values or both which are guaranteed
 424 in the original policy;

425 (ii) Weighting factor for single premium immediate
426 annuities and for annuity benefits involving life
427 contingencies arising from other annuities with cash
428 settlement options and guaranteed interest contracts with
429 cash settlement options: .80;

430 (iii) Weighting factors for other annuities and for
431 guaranteed interest contracts, except as stated in
432 subparagraph (ii) of this paragraph, shall be as specified in
433 clauses (I), (II) and (III) below, according to the rules and
434 definitions in clauses (IV), (V) and (VI) below:

435 (I) For annuities and guaranteed interest contracts
436 valued on an issue year basis:

437 Guarantee	438 Weighting Factor 439 for Plan Type		
440 (Years)	<u>A</u>	<u>B</u>	<u>C</u>
441 5 or less:	.80	.60	.50
442 More than 5, but not more than 10:	.75	.60	.50
443 More than 10, but not more than 20:	.65	.50	.45
444 More than 20:	.45	.35	.35

444 (II) For annuities and guaranteed interest contracts
445 valued on a change in fund basis, the factors shown in
446 subparagraph (i) of this paragraph increased by:

447	448 Weighting Factor 449 for Plan Type		
450	<u>A</u>	<u>B</u>	<u>C</u>
	.15	.25	.05

451 (III) For annuities and guaranteed interest contracts
452 valued on an issue year basis (other than those with no
453 cash settlement options) which do not guarantee interest
454 on considerations received more than one year after issue
455 or purchase and for annuities and guaranteed interest
456 contracts valued on a change in fund basis which do not
457 guarantee interest rates on considerations received more
458 than twelve months beyond the valuation date, the factors
459 shown in (I) or derived in (II) increased by:

460	Weighting Factor		
461	for Plan Type		
462	<u>A</u>	<u>B</u>	<u>C</u>
463	.05	.05	.05

464 (IV) For other annuities with cash settlement options
 465 and guaranteed interest contracts with cash settlement
 466 options, the guarantee duration is the number of years for
 467 which the contract guarantees interest rates in excess of the
 468 calendar year statutory valuation interest rate for life
 469 insurance policies with guarantee duration in excess of
 470 twenty years. For other annuities with no cash settlement
 471 options and for guaranteed interest contracts with no cash
 472 settlement options, the guaranteed duration is the number
 473 of years from the date of issue or date of purchase to the
 474 date annuity benefits are scheduled to commence.

475 (V) Plan type as used in the above tables is defined as
 476 follows:

477 Plan Type A:

478 At any time policyholder may withdraw funds only:
 479 (1) With an adjustment to reflect changes in interest rates
 480 or asset values since receipt of the funds by the insurance
 481 company; or (2) without such adjustment but in
 482 installments over five years or more; or (3) as an
 483 immediate life annuity; or (4) no withdrawal permitted;

484 Plan Type B:

485 Before expiration of the interest rate guarantee,
 486 policyholder may withdraw funds only: (1) With an
 487 adjustment to reflect changes in interest rates or asset
 488 values since receipt of the funds by the insurance
 489 company; or (2) without such adjustment but in
 490 installments over five years or more; or (3) no withdrawal
 491 permitted. At the end of interest rate guarantee, funds
 492 may be withdrawn without such adjustment in a single sum
 493 or installments over less than five years;

494 Plan Type C:

495 Policyholder may withdraw funds before expiration of
496 interest rate guarantee in a single sum or installments over
497 less than five years either: (1) Without adjustment to
498 reflect changes in interest rates or asset values since receipt
499 of the funds by the insurance company; or (2) subject
500 only to a fixed surrender charge stipulated in the contract
501 as a percentage of the fund.

502 (VI) A company may elect to value guaranteed
503 interest contracts with cash settlement options and
504 annuities with cash settlement options on either an issue
505 year basis or on a change in fund basis. Guaranteed
506 interest contracts with no cash settlement options and other
507 annuities with no cash settlement options must be valued
508 on an issue year basis. As used in this section, an issue
509 year basis of valuation refers to a valuation basis under
510 which the interest rate used to determine the minimum
511 valuation standard for the entire duration of the annuity or
512 guaranteed interest contract is the calendar year valuation
513 interest rate for the year of issue or year of purchase of
514 the annuity or guaranteed interest contract and the change
515 in fund basis of valuation refers to a valuation basis under
516 which the interest rate used to determine the minimum
517 valuation standard applicable to each change in the fund
518 held under the annuity or guaranteed interest contract is
519 the calendar year valuation interest rate for the year of the
520 change in the fund.

521 (4) *Reference interest rate.* —

522 (A) Reference interest rate referred to in subparagraph
523 (ii), paragraph (A), subdivision (2) of this subsection shall
524 be defined as follows:

525 (i) For all life insurance, the lesser of the average over
526 a period of thirty-six months and the average over a
527 period of twelve months, ending on the thirtieth day of
528 June of the calendar year next preceding the year of issue,
529 of the monthly average of the composite yield on
530 seasoned corporate bonds, as published by Moody's
531 investors service, inc.

532 (ii) For single premium immediate annuities and for
533 annuity benefits involving life contingencies arising from
534 other annuities with cash settlement options and
535 guaranteed interest contracts with cash settlement options,
536 the average over a period of twelve months, ending on the
537 thirtieth day of June of the calendar year of issue or year
538 of purchase, of the monthly average of the composite
539 yield on seasoned corporate bonds, as published by
540 Moody's investors service, inc.

541 (iii) For other annuities with cash settlement options
542 and guaranteed interest contracts with cash settlement
543 options, valued on a year of issue basis, except as stated in
544 subparagraph (ii) of this paragraph, with guarantee
545 duration in excess of ten years, the lesser of the average
546 over a period of thirty-six months and the average over a
547 period of twelve months, ending on the thirtieth day of
548 June of the calendar year of issue or purchase, of the
549 monthly average of the composite yield on seasoned
550 Corporate Bonds, as published by Moody's investors
551 service, inc.

552 (iv) For other annuities with cash settlement options
553 and guaranteed interest contracts with cash settlement
554 options, valued on a year of issue basis, except as stated in
555 (ii) above, with guarantee duration of ten years or less, the
556 average over a period of twelve months, ending on the
557 thirtieth day of June of the calendar year of issue or
558 purchase, of the monthly average of the composite yield
559 on seasoned corporate bonds, as published by Moody's
560 investors service, inc.

561 (v) For other annuities with no cash settlement options
562 and for guaranteed interest contracts with no cash
563 settlement options, the average over a period of twelve
564 months, ending on the thirtieth day of June of the
565 calendar year of issue or purchase, of the monthly average
566 of the composite yield on seasoned corporate bonds, as
567 published by Moody's investors service, inc.

568 (vi) For other annuities with cash settlement options
569 and guaranteed interest contracts with cash settlement

570 options, valued on a change in fund basis, except as stated
571 in subparagraph (ii) of this paragraph, the average over a
572 period of twelve months, ending on the thirtieth day of
573 June of the calendar year of the change in the fund, of the
574 monthly average of the composite yield on seasoned
575 corporate bonds, as published by Moody's investors
576 service, inc.

577 (5) *Alternative method for determining reference*
578 *interest rates.* —

579 In the event that the monthly average of the composite
580 yield on seasoned corporate bonds is no longer published
581 by Moody's investors service, inc., or in the event that the
582 national association of insurance commissioners
583 determines that the monthly average of the composite
584 yield on seasoned corporate bonds as published by
585 Moody's investors service, inc., is no longer appropriate
586 for the determination of the reference interest rate, then an
587 alternative method for determination of the reference
588 interest rate, which is adopted by the national association
589 of insurance commissioners and approved by regulation
590 promulgated by the commissioner, may be substituted.

591 (g) *Reserve valuation method — life insurance and*
592 *endowment benefits.*

593 Except as otherwise provided in subsections (h), (k)
594 and (m) of this section, reserves according to the
595 commissioners reserve valuation method, for the life
596 insurance and endowment benefits of policies providing
597 for a uniform amount of insurance and requiring the
598 payment of uniform premiums shall be the excess, if any,
599 of the present value, at the date of valuation, of such future
600 guaranteed benefits provided for by such policies, over the
601 then present value of any future modified net premiums
602 therefor. The modified net premiums for any such policy
603 shall be such uniform percentage of the respective
604 contract premiums for such benefits that the present value,
605 at the date of issue of the policy, of all such modified net
606 premiums shall be equal to the sum of the then present
607 value of such benefits provided for by the policy and the

608 excess of subdivision (1) over subdivision (2), as follows:

609 (1) A net level annual premium equal to the present
610 value, at the date of issue, of such benefits provided for
611 after the first policy year, divided by the present value, at
612 the date of issue, of an annuity of one per annum payable
613 on the first and each subsequent anniversary of such
614 policy on which a premium falls due: *Provided*, That
615 such net level annual premium shall not exceed the net
616 level annual premium on the nineteen year premium
617 whole life plan for insurance of the same amount at an age
618 one year higher than the age at issue of such policy.

619 (2) A net one year term premium for such benefits
620 provided for in the first policy year: *Provided*, That for
621 any life insurance policy issued on or after the first day of
622 January, one thousand nine hundred eighty-five, for which
623 the contract premium in the first policy year exceeds that
624 of the second year and for which no comparable
625 additional benefit is provided in the first year for such
626 excess and which provides an endowment benefit or a cash
627 surrender value or a combination thereof in an amount
628 greater than such excess premium, the reserve according
629 to the commissioners' reserve valuation method as of any
630 policy anniversary occurring on or before the assumed
631 ending date defined herein as the first policy anniversary
632 on which the sum of any endowment benefit and any cash
633 surrender value then available is greater than such excess
634 premium shall, except as otherwise provided in subsection
635 (k) of this section, be the greater of the reserve as of such
636 policy anniversary calculated as described in the
637 preceding paragraph and the reserve as of such policy
638 anniversary calculated as described in that paragraph, but
639 with: (i) The value defined in subdivision (1) of that
640 paragraph being reduced by fifteen percent of the amount
641 of such excess first year premium; (ii) all present values of
642 benefits and premiums being determined without
643 reference to premiums or benefits provided for by the
644 policy after the assumed ending date; (iii) the policy being
645 assumed to mature on such date as an endowment; and
646 (iv) the cash surrender value provided on such date being

647 considered as an endowment benefit. In making the above
648 comparison the mortality and interest bases stated in
649 subsections (d) and (f) of this section shall be used.

650 Reserves according to the commissioners' reserve
651 valuation method for: (i) Life insurance policies providing
652 for a varying amount of insurance or requiring the
653 payment of varying premiums; (ii) group annuity and
654 pure endowment contracts purchased under a retirement
655 plan or plan of deferred compensation, established or
656 maintained by an employer (including a partnership or
657 sole proprietorship) or by an employee organization, or
658 by both, other than a plan providing individual retirement
659 accounts or individual retirement annuities under Section
660 408 of the Internal Revenue Code (26 U.S.C. §408), as
661 now or hereafter amended; (iii) disability and accidental
662 death benefits in all policies and contracts; and (iv) all
663 other benefits, except life insurance and endowment
664 benefits in life insurance policies and benefits provided by
665 all other annuity and pure endowment contracts, shall be
666 calculated by a method consistent with the principles of
667 the preceding paragraphs of this section.

668 *(h) Reserve valuation method — annuity and pure*
669 *endowment benefits. —*

670 This subsection shall apply to all annuity and pure
671 endowment contracts other than group annuity and pure
672 endowment contracts purchased under a retirement plan
673 or plan of deferred compensation, established or
674 maintained by an employer (including a partnership or
675 sole proprietorship) or by an employee organization, or
676 by both, other than a plan providing individual retirement
677 accounts or individual retirement annuities under Section
678 408 of the Internal Revenue Code (26 U.S.C. §408), as
679 now or hereafter amended.

680 Reserves according to the commissioners' annuity
681 reserve method for benefits under annuity or pure
682 endowment contracts, excluding any disability and
683 accidental death benefits in such contracts, shall be the
684 greatest of the respective excesses of the present values, at

685 the date of valuation, of the future guaranteed benefits,
 686 including guaranteed nonforfeiture benefits, provided for
 687 by such contracts at the end of each respective contract
 688 year, over the present value, at the date of valuation, of any
 689 future valuation considerations derived from future gross
 690 considerations, required by the terms of such contract, that
 691 become payable prior to the end of such respective
 692 contract year. The future guaranteed benefits shall be
 693 determined by using the mortality table, if any, and the
 694 interest rate, or rates, specified in such contracts for
 695 determining guaranteed benefits. The valuation consider-
 696 ations are the portions of the respective gross con-
 697 siderations applied under the terms of such contracts to
 698 determine nonforfeiture values.

699 (i) *Minimum reserves.* —

700 (1) In no event shall a company's aggregate reserves
 701 for all life insurance policies, excluding disability and
 702 accidental death benefits, issued on or after the effective
 703 date of this section, be less than the aggregate reserves
 704 calculated in accordance with the methods set forth in
 705 subsections (g), (h), (k) and (l) of this section and the
 706 mortality table or tables and rate or rates of interest used
 707 in calculating nonforfeiture benefits for such policies.

708 (2) In no event shall the aggregate reserves for all
 709 policies, contracts and benefits be less than the aggregate
 710 reserves determined by the qualified actuary to be
 711 necessary to render the opinion required by subsection (c)
 712 of this section.

713 (j) *Optional reserve calculation.* —

714 Reserves for all policies and contracts issued prior to
 715 the effective date of this section may be calculated, at the
 716 option of the company, according to any standards which
 717 produce greater aggregate reserves for all such policies
 718 and contracts than the minimum reserves required by the
 719 laws in effect immediately prior to such date.

720 Reserves for any category of policies, contracts or
 721 benefits as established by the commissioner, issued on or

722 after the effective date of this section, may be calculated, at
723 the option of the company, according to any standards
724 which produce greater aggregate reserves for such
725 category than those calculated according to the minimum
726 standard herein provided, but the rate or rates of interest
727 used for policies and contracts, other than annuity and
728 pure endowment contracts, shall not be higher than the
729 corresponding rate or rates of interest used in calculating
730 any nonforfeiture benefits provided therein.

731 Any such company which at any time shall have
732 adopted any standard of valuation producing greater
733 aggregate reserves than those calculated according to the
734 minimum standard herein provided may, with the approval
735 of the commissioner, adopt any lower standard of
736 valuation, but not lower than the minimum herein
737 provided: *Provided*, That for the purposes of this section,
738 the holding of additional reserves previously determined
739 by a qualified actuary to be necessary to render the
740 opinion required by subsection (c) of this section shall not
741 be deemed to be the adoption of a higher standard of
742 valuation.

743 (k) *Reserve calculation — valuation net premium*
744 *exceeding the gross premium charged. —*

745 If in any contract year the gross premium charged by
746 any life insurance company on any policy or contract is
747 less than the valuation net premium for the policy or
748 contract calculated by the method used in calculating the
749 reserve thereon but using the minimum valuation
750 standards of mortality and rate of interest, the minimum
751 reserve required for such policy or contract shall be the
752 greater of either the reserve calculated according to the
753 mortality table, rate of interest, and method actually used
754 for such policy or contract, or the reserve calculated by
755 the method actually used for such policy or contract but
756 using the minimum valuation standards of mortality and
757 rate of interest and replacing the valuation net premium
758 by the actual gross premium in each contract year for
759 which the valuation net premium exceeds the actual gross

760 premium. The minimum valuation standards of mortality
 761 and rate of interest referred to in this section are those
 762 standards stated in subsections (d) and (f) of this section:
 763 *Provided*, That for any life insurance policy issued on or
 764 after the first day of January, one thousand nine hundred
 765 eighty-five, for which the gross premium in the first policy
 766 year exceeds that of the second year and for which no
 767 comparable additional benefit is provided in the first year
 768 for such excess and which provides an endowment benefit
 769 or a cash surrender value or a combination thereof in an
 770 amount greater than such excess premium, the foregoing
 771 provisions of this subsection shall be applied as if the
 772 method actually used in calculating the reserve for such
 773 policy were the method described in subsection (g) of this
 774 section, ignoring the second paragraph of said subsection.
 775 The minimum reserve at each policy anniversary of such a
 776 policy shall be the greater of the minimum reserve
 777 calculated in accordance with said subsection, including
 778 the second paragraph of that section, and the minimum
 779 reserve calculated in accordance with this subsection.

780 (l) *Reserve calculation — indeterminate premium*
 781 *plans. —*

782 In the case of any plan of life insurance which
 783 provides for future premium determination, the amounts
 784 of which are to be determined by the insurance company
 785 based on then estimates of future experience, or in the
 786 case of any plan of life insurance or annuity which is of
 787 such a nature that the minimum reserves cannot be
 788 determined by the methods described in subsections (g),
 789 (h) and (k) of this section, the reserves which are held
 790 under any such plan must:

791 (1) Be appropriate in relation to the benefits and the
 792 pattern of premiums for that plan; and

793 (2) Be computed by a method which is consistent with
 794 the principles of this standard valuation law, as determined
 795 by regulations promulgated by the commissioner.

796 (m) *Minimum standards for health (disability,*

797 *accident and sickness) plans. —*

798 The commissioner shall promulgate a regulation
799 containing the minimum standards applicable to the
800 valuation of health (disability, sickness and accident)
801 plans.

802 (n) The commissioner shall promulgate a rule on or
803 before the first day of November, one thousand nine
804 hundred ninety-five, prescribing the guidelines and
805 standards for statements of actuarial opinion which are to
806 be submitted in accordance with subsection (c) of this
807 section and for memoranda in support thereof; guidelines
808 and standards for statements of actuarial opinion which
809 are to be submitted when a company is exempt from
810 subdivision (2), subsection (c) of the standard valuation
811 law; and rules applicable to the appointment of an
812 appointed actuary.

813 (o) *Effective Date. —*

814 All acts and parts of acts inconsistent with the
815 provision of this section are hereby repealed as of the
816 effective date of this section. This section shall take effect
817 the first day of January, one thousand nine hundred
818 ninety-six.

**ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COM-
PANIES.**

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

1 Each company to the same extent such provisions are
2 applicable to domestic mutual insurers shall be governed
3 by and be subject to the following articles of this chapter:
4 Article one (definitions); article two (insurance com-
5 missioner); article four (general provisions) except that
6 section sixteen of said article shall not be applicable
7 thereto; article seven (assets and liabilities); article ten
8 (rehabilitation and liquidation) except that under the
9 provisions of section thirty-two of said article assessments
10 shall not be levied against any former member of a
11 farmers' mutual fire insurance company who is no longer

12 a member of the company at the time the order to show
 13 cause was issued; article eleven (unfair trade practices);
 14 article twelve (agents, brokers and solicitors) except that
 15 the agent's license fee shall be five dollars; article
 16 twenty-six (West Virginia insurance guaranty association
 17 act); article twenty-seven (insurance holding company
 18 systems); article thirty (mine subsidence insurance) except
 19 that under the provisions of section six of said article, a
 20 farmers' mutual insurance company shall have the option
 21 of offering mine subsidence coverage to all of its
 22 policyholders but shall not be required to do so; article
 23 thirty-three (annual audited financial report); article
 24 thirty-four (administrative supervision); article thirty-
 25 four-a (standards and commissioner's authority for
 26 companies deemed to be in hazardous financial
 27 condition); article thirty-five (criminal sanctions for
 28 failure to report impairment); article thirty-six (business
 29 transacted with producer-controlled property/casualty
 30 insurer); article thirty-seven (managing general agents);
 31 article thirty-nine (disclosure of material transactions); and
 32 article forty (risk-based capital for insurers); but only to
 33 the extent these provisions are not inconsistent with the
 34 provisions of this article.

ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.

§33-40-1. Definitions.

1 As used in this article, these terms shall have the
 2 following meanings:

3 (a) "Adjusted RBC report" means an RBC report which
 4 has been adjusted by the commissioner in accordance with
 5 subsection (e), section two of this article.

6 (b) "Corrective order" means an order issued by the
 7 commissioner specifying corrective actions which the
 8 commissioner has determined are required.

9 (c) "Commissioner" means the insurance commis-
 10 sioner of the state of West Virginia.

11 (d) "Domestic insurer" means any insurance company

12 or farmers' mutual fire insurance company domiciled in
13 this state.

14 (e) "Foreign insurer" means any insurance company
15 which is licensed to do business in this state under article
16 three of this chapter but is not domiciled in this state.

17 (f) "NAIC" means the national association of insurance
18 commissioners.

19 (g) "Life and/or health insurer" means any insurance
20 company licensed under article three of this chapter or a
21 licensed property and casualty insurer writing only
22 accident and health insurance.

23 (h) "Property and casualty insurer" means any
24 insurance company licensed under article three of this
25 chapter or any farmers mutual fire insurance company
26 licensed under article twenty-two of this chapter, but shall
27 not include monoline mortgage guaranty insurers,
28 financial guaranty insurers and title insurers.

29 (i) "Negative trend" means, with respect to a life and/or
30 health insurer, negative trend over a period of time, as
31 determined in accordance with the trend test calculation
32 included in the RBC instructions.

33 (j) "RBC instructions" means the RBC report including
34 risk-based capital instructions adopted by the NAIC, as
35 such RBC instructions may be amended by the NAIC
36 from time to time in accordance with the procedures
37 adopted by the NAIC.

38 (k) "RBC level" means an insurer's company action
39 level RBC, regulatory action level RBC, authorized control
40 level RBC, or mandatory control level RBC where:

41 (1) "Company action level RBC" means, with respect to
42 any insurer, the product of two and its authorized control
43 level RBC;

44 (2) "Regulatory action level RBC" means the product
45 of one and one half and its authorized control level RBC;

46 (3) "Authorized control level RBC" means the number

47 determined under the risk-based capital formula in
48 accordance with the RBC instructions;

49 (4) "Mandatory control level RBC" means the product
50 of seven tenths and the authorized control level RBC.

51 (l) "RBC plan" means a comprehensive financial plan
52 containing the elements specified in subsection (b), section
53 three of this article. If the commissioner rejects the RBC
54 plan, and it is revised by the insurer, with or without the
55 commissioner's recommendation, the plan shall be called
56 the revised RBC plan.

57 (m) "RBC report" means the report required in section
58 two of this article.

59 (n) "Total adjusted capital" means the sum of:

60 (1) An insurer's statutory capital and surplus as
61 determined in accordance with the statutory accounting
62 applicable to the financial statements required to be filed
63 under section fourteen, article four of this chapter; and

64 (2) Such other items, if any, as the RBC instructions
65 may provide.

§33-40-2. RBC reports.

1 (a) Every domestic insurer shall, on or prior to each
2 first day of March (the "filing date"), prepare and submit
3 to the commissioner a report of its RBC levels as of the
4 end of the calendar year just ended, in a form and
5 containing such information as is required by the RBC
6 instructions. In addition, every domestic insurer shall file
7 its RBC report:

8 (1) With the NAIC in accordance with the RBC
9 instructions; and

10 (2) With the insurance commissioner in any state in
11 which the insurer is authorized to do business, if the
12 insurance commissioner has notified the insurer of its
13 request in writing, in which case the insurer shall file its
14 RBC report not later than the later of:

15 (A) Fifteen days from the receipt of notice to file its
16 RBC report with that state; or

17 (B) The filing date.

18 (b) A life and health insurer's RBC shall be determined
19 in accordance with the formula set forth in the RBC
20 instructions. The formula shall take into account (and
21 may adjust for the covariance between):

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

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

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

27 (4) All other business risks and such other relevant
28 risks as are set forth in the RBC instructions determined in
29 each case by applying the factors in the manner set forth
30 in the RBC instructions.

31 (c) A property and casualty insurer's RBC shall be
32 determined in accordance with the formula set forth in the
33 RBC instructions. The formula shall take into account
34 (and may adjust for the covariance between):

35 (1) Asset risk;

36 (2) Credit risk;

37 (3) Underwriting risk; and

38 (4) All other business risks and such other relevant
39 risks as are set forth in the RBC instructions determined in
40 each case by applying the factors in the manner set forth
41 in the RBC instructions.

42 (d) An excess of capital over the amount produced by
43 the risk-based capital requirements contained in this article
44 and the formulas, schedules and instructions referenced in
45 this article is desirable in the business of insurance.
46 Accordingly, insurers should seek to maintain capital
47 above the RBC levels required by this article. Additional
48 capital is used and useful in the insurance business and

49 helps to secure an insurer against various risks inherent in,
50 or affecting, the business of insurance and not accounted
51 for or only partially measured by the risk-based capital
52 requirements contained in this article.

53 (e) If a domestic insurer files an RBC report which in
54 the judgment of the commissioner is inaccurate, then the
55 commissioner shall adjust the RBC report to correct the
56 inaccuracy and shall notify the insurer of the adjustment.
57 The notice shall contain a statement of the reason for the
58 adjustment. An RBC report as so adjusted is referred to as
59 an "Adjusted RBC Report".

§33-40-3. Company action level event.

1 (a) "Company action level event" means any of the
2 following events:

3 (1) The filing of an RBC report by an insurer which
4 indicates that:

5 (A) The insurer's total adjusted capital is greater than
6 or equal to its regulatory action level RBC but less than its
7 company action level RBC; or

8 (B) If a life and/or health insurer, the insurer has total
9 adjusted capital which is greater than or equal to its
10 company action level RBC but less than the product of its
11 authorized control level RBC and two and one half and
12 has a negative trend;

13 (2) The notification by the commissioner to the
14 insurer of an adjusted RBC report that indicates an event
15 in subdivision (1) of this subsection, provided the insurer
16 does not challenge the adjusted RBC report under section
17 seven of this article; or

18 (3) If, pursuant to section seven of this article, an
19 insurer challenges an adjusted RBC report that indicates
20 the event in subdivision (1) of this subsection, the
21 notification by the commissioner to the insurer that the
22 commissioner has, after a hearing, rejected the insurer's
23 challenge.

24 (b) In the event of a company action level event, the
25 insurer shall prepare and submit to the commissioner an
26 RBC plan which shall:

27 (1) Identify the conditions which contribute to the
28 company action level event;

29 (2) Contain proposals of corrective actions which the
30 insurer intends to take and would be expected to result in
31 the elimination of the company action level event;

32 (3) Provide projections of the insurer's financial results
33 in the current year and at least the four succeeding years,
34 both in the absence of proposed corrective actions and
35 giving effect to the proposed corrective actions, including
36 projections of statutory operating income, net income,
37 capital and/or surplus. (The projections for both new and
38 renewal business may include separate projections for
39 each major line of business and separately identify each
40 significant income, expense and benefit component);

41 (4) Identify the key assumptions impacting the
42 insurer's projections and the sensitivity of the projections
43 to the assumptions; and

44 (5) Identify the quality of, and problems associated
45 with, the insurer's business, including, but not limited to, its
46 assets, anticipated business growth and associated surplus
47 strain, extraordinary exposure to risk, mix of business and
48 use of reinsurance, if any, in each case.

49 (c) The RBC plan shall be submitted:

50 (1) Within forty-five days of the company action level
51 event; or

52 (2) If the insurer challenges an adjusted RBC report
53 pursuant to section seven of this article, within forty-five
54 days after notification to the insurer that the commissioner
55 has, after a hearing, rejected the insurer's challenge.

56 (d) Within sixty days after the submission by an
57 insurer of an RBC plan to the commissioner, the
58 commissioner shall notify the insurer whether the RBC

59 plan shall be implemented or is, in the judgment of the
60 commissioner, unsatisfactory. If the commissioner
61 determines the RBC plan is unsatisfactory, the notification
62 to the insurer shall set forth the reasons for the
63 determination, and may set forth proposed revisions which
64 will render the RBC plan satisfactory, in the judgment of
65 the commissioner. Upon notification from the
66 commissioner, the insurer shall prepare a revised RBC
67 plan, which may incorporate by reference any revisions
68 proposed by the commissioner, and shall submit the
69 revised RBC plan to the commissioner:

70 (1) Within forty-five days after the notification from
71 the commissioner; or

72 (2) If the insurer challenges the notification from the
73 commissioner under section seven of this article, within
74 forty-five days after a notification to the insurer that the
75 commissioner has, after a hearing, rejected the insurer's
76 challenge.

77 (e) In the event of a notification by the commissioner
78 to an insurer that the insurer's RBC plan or revised RBC
79 plan is unsatisfactory, the commissioner may at the
80 commissioner's discretion, subject to the insurer's right to a
81 hearing under section seven of this article, specify in the
82 notification that the notification constitutes a regulatory
83 action level event.

84 (f) Every domestic insurer that files an RBC plan or
85 revised RBC plan with the commissioner shall file a copy
86 of the RBC plan or revised RBC plan with the insurance
87 commissioner in any state in which the insurer is
88 authorized to do business if:

89 (1) Such state has an RBC provision substantially
90 similar to subsection (a), section eight of this article; and

91 (2) The insurance commissioner of that state has
92 notified the insurer of its request for the filing in writing,
93 in which case the insurer shall file a copy of the RBC plan
94 or revised RBC plan in that state no later than the later of:

95 (i) Fifteen days after the receipt of notice to file a
96 copy of its RBC plan or revised RBC plan with the state; or

97 (ii) The date on which the RBC plan or revised RBC
98 plan is filed under subsections (c) and (d) of this section.

99 **§33-40-4. Regulatory action level event.**

100 (a) "Regulatory action level event" means, with respect
101 to any insurer, any of the following events:

102 (1) The filing of an RBC report by the insurer which
103 indicates that the insurer's total adjusted capital is greater
104 than or equal to its authorized control level RBC but less
105 than its regulatory action level RBC;

106 (2) The notification by the commissioner to an insurer
107 of an adjusted RBC report that indicates the event in
108 subdivision (1) of this subsection, provided the insurer
109 does not challenge the adjusted RBC report under section
110 seven of this article;

111 (3) If, pursuant to section seven of this article, the
112 insurer challenges an adjusted RBC report that indicates
113 the event in subdivision (1) of this subsection, the
114 notification by the commissioner to the insurer that the
115 commissioner has, after a hearing, rejected the insurer's
116 challenge;

117 (4) The failure of the insurer to file an RBC report by
118 the filing date, unless the insurer has provided an
119 explanation for such failure which is satisfactory to the
120 commissioner and has cured the failure within ten days
121 after the filing date;

122 (5) The failure of the insurer to submit an RBC plan to
123 the commissioner within the time period set forth in
124 subsection (c), section three of this article;

125 (6) Notification by the commissioner to the insurer
126 that:

127 (A) The RBC plan or revised RBC plan submitted by
128 the insurer is, in the judgment of the commissioner,
129 unsatisfactory; and

130 (B) Such notification constitutes a regulatory action
131 level event with respect to the insurer, provided the insurer
132 has not challenged the determination under section seven
133 of this article;

134 (7) If, pursuant to section seven of this article, the
135 insurer challenges a determination by the commissioner
136 under subdivision (6) of this subsection, the notification
137 by the commissioner to the insurer that the commissioner
138 has, after a hearing, rejected such challenge;

139 (8) Notification by the commissioner to the insurer
140 that the insurer has failed to adhere to its RBC plan or
141 revised RBC plan, but only if such failure has a substantial
142 adverse effect on the ability of the insurer to eliminate the
143 company action level event in accordance with its RBC
144 plan or revised RBC plan and the commissioner has so
145 stated in the notification, provided the insurer has not
146 challenged the determination under section seven of this
147 article; or

148 (9) If, pursuant to section seven of this article, the
149 insurer challenges a determination by the commissioner
150 under subdivision (8) of this subsection, the notification
151 by the commissioner to the insurer that the commissioner
152 has, after a hearing, rejected the challenge.

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

155 (1) Require the insurer to prepare and submit an RBC
156 plan or, if applicable, a revised RBC plan;

157 (2) Perform such examination or analysis as the
158 commissioner deems necessary of the assets, liabilities and
159 operations of the insurer including a review of its RBC
160 plan or revised RBC plan; and

161 (3) Subsequent to the examination or analysis, issue an
162 order specifying such corrective actions as the
163 commissioner shall determine are required (a "corrective
164 order").

165 (c) In determining corrective actions, the commis-

166 sioner may take into account such factors as are deemed
167 relevant with respect to the insurer based upon the
168 commissioner's examination or analysis of the assets,
169 liabilities and operations of the insurer, including, but not
170 limited to, the results of any sensitivity tests undertaken
171 pursuant to the RBC instructions. The RBC plan or revised
172 RBC plan shall be submitted:

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

175 (2) If the insurer challenges an adjusted RBC report
176 pursuant to section seven of this article and the challenge
177 is not frivolous in the judgment of the commissioner
178 within forty-five days after the notification to the insurer
179 that the commissioner has, after a hearing, rejected the
180 insurer's challenge; or

181 (3) If the insurer challenges a revised RBC plan
182 pursuant to section seven of this article and the challenge
183 is not frivolous in the judgment of the commissioner,
184 within forty-five days after the notification to the insurer
185 that the commissioner has, after a hearing, rejected the
186 insurer's challenge.

187 (d) The commissioner may retain actuaries and
188 investment experts and other consultants as may be
189 necessary in the judgment of the commissioner to review
190 the insurer's RBC plan or revised RBC plan, examine or
191 analyze the assets, liabilities and operations of the insurer
192 and formulate the corrective order with respect to the
193 insurer. The fees, costs and expenses relating to
194 consultants shall be borne by the affected insurer or such
195 other party as directed by the commissioner.

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

1 (a) "Authorized control level event" means any of the
2 following events:

3 (1) The filing of an RBC report by the insurer which
4 indicates that the insurer's total adjusted capital is greater
5 than or equal to its mandatory control level RBC but less

6 than its authorized control level RBC;

7 (2) The notification by the commissioner to the
8 insurer of an adjusted RBC report that indicates the event
9 in subdivision (1) of this subsection, provided the insurer
10 does not challenge the adjusted RBC report under section
11 seven of this article;

12 (3) If, pursuant to section seven of this article, the
13 insurer challenges an adjusted RBC report that indicates
14 the event in subdivision (1) of this subsection, notification
15 by the commissioner to the insurer that the commissioner
16 has, after a hearing, rejected the insurer's challenge;

17 (4) The failure of the insurer to respond, in a manner
18 satisfactory to the commissioner, to a corrective order
19 (provided the insurer has not challenged the corrective
20 order) under section seven of this article; or

21 (5) If the insurer has challenged a corrective order
22 under section seven of this article and the commissioner
23 has, after a hearing, rejected the challenge or modified the
24 corrective order, the failure of the insurer to respond, in a
25 manner satisfactory to the commissioner, to the corrective
26 order subsequent to rejection or modification by the
27 commissioner.

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

30 (1) Take such actions as are required under section
31 four of this article regarding an insurer with respect to
32 which a regulatory action level event has occurred; or

33 (2) If the commissioner deems it to be in the best
34 interests of the policyholders and creditors of the insurer
35 and of the public, take such actions as are necessary to
36 cause the insurer to be placed under regulatory control
37 under article ten of this chapter. In the event the
38 commissioner takes such actions, the authorized control
39 level event shall be deemed sufficient grounds for the
40 commissioner to take action under said article, and the
41 commissioner shall have the rights, powers and duties with

42 respect to the insurer as are set forth in said article. In the
43 event the commissioner takes actions under this
44 subdivision pursuant to an adjusted RBC report, the
45 insurer shall be entitled to such protections as are afforded
46 to insurers under the provisions of article ten of this
47 chapter pertaining to summary proceedings.

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

1 (a) "Mandatory control level event" means any of the
2 following events:

3 (1) The filing of an RBC report which indicates that
4 the insurer's total adjusted capital is less than its mandatory
5 control level RBC;

6 (2) Notification by the commissioner to the insurer of
7 an adjusted RBC report that indicates the event in
8 subdivision (1) of this subsection, provided the insurer
9 does not challenge the adjusted RBC report under section
10 seven of this article; or

11 (3) If, pursuant to section seven of this article, the
12 insurer challenges an adjusted RBC report that indicates
13 the event in subdivision (1) of this subsection, notification
14 by the commissioner to the insurer that the commissioner
15 has, after a hearing, rejected the insurer's challenge.

16 (b) In the event of a mandatory control level event:

17 (1) With respect to a life insurer, the commissioner
18 shall take such actions as are necessary to place the insurer
19 under regulatory control under article ten of this chapter.
20 In that event, the mandatory control level event shall be
21 deemed sufficient grounds for the commissioner to take
22 action under said article, and the commissioner shall have
23 the rights, powers and duties with respect to the insurer as
24 are set forth in said article. If the commissioner takes
25 actions pursuant to an adjusted RBC report, the insurer
26 shall be entitled to the protections of said article pertaining
27 to summary proceedings. Notwithstanding any of the
28 foregoing, the commissioner may forego action for up to
29 ninety days after the mandatory control level event if the

30 commissioner finds there is a reasonable expectation that
31 the mandatory control level event may be eliminated
32 within the ninety-day period.

33 (2) With respect to a property and casualty insurer, the
34 commissioner shall take such actions as are necessary to
35 place the insurer under regulatory control under article
36 ten of this chapter, or, in the case of an insurer which is
37 writing no business and which is running-off its existing
38 business, may allow the insurer to continue its run-off
39 under the supervision of the commissioner. In either
40 event, the mandatory control level event shall be deemed
41 sufficient grounds for the commissioner to take action
42 under said article and the commissioner shall have the
43 rights, powers and duties with respect to the insurer as are
44 set forth in said article. If the commissioner takes actions
45 pursuant to an adjusted RBC report, the insurer shall be
46 entitled to the protections of said article pertaining to
47 summary proceedings. Notwithstanding any of the
48 foregoing, the commissioner may forego action for up to
49 ninety days after the mandatory control level event if the
50 commissioner finds there is a reasonable expectation that
51 the mandatory control level event may be eliminated
52 within the ninety-day period.

§33-40-7. Hearings.

1 Insurers shall have the right to a confidential
2 departmental hearing, on a record, at which the insurer
3 may challenge any determination or action by the
4 commissioner made pursuant to the provisions of this
5 article. The insurer shall notify the commissioner of its
6 request for a hearing within five days after receiving
7 notification from the commissioner.

8 (a) Notification to an insurer by the commissioner of
9 an adjusted RBC report; or

10 (b) Notification to an insurer by the commissioner
11 that:

12 (1) The insurer's RBC plan or revised RBC plan is
13 unsatisfactory; and

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

16 (c) Notification to any insurer by the commissioner
17 that the insurer has failed to adhere to its RBC plan or
18 revised RBC plan and that such failure has a substantial
19 adverse effect on the ability of the insurer to eliminate the
20 company action level event with respect to the insurer in
21 accordance with its RBC plan or revised RBC plan; or

22 (d) Notification to an insurer by the commissioner of
23 a Corrective order with respect to the insurer.

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

**§33-40-8. Confidentiality; prohibition on announcements,
prohibition on use in ratemaking.**

1 (a) All RBC reports (to the extent the information
2 therein is not required to be set forth in a publicly
3 available annual statement schedule) and RBC plans
4 (including the results or report of any examination or
5 analysis of an insurer performed pursuant hereto and any
6 corrective order issued by the commissioner pursuant to
7 examination or analysis) with respect to any domestic
8 insurer or foreign insurer which are filed with the
9 commissioner constitute information that might be
10 damaging to the insurer if made available to its
11 competitors and therefore shall be kept confidential by the
12 commissioner. This information shall not be made public
13 and/or be subject to subpoena, other than by the
14 commissioner and then only for the purpose of
15 enforcement actions taken by the commissioner pursuant
16 to this article or any other provision of the insurance laws
17 of this state. The information required by this article is
18 specifically exempt from the requirements of chapter
19 twenty-nine-b of this code.

20 (b) It is the judgment of the Legislature that the
21 comparison of an insurer's total adjusted capital to any of

22 its RBC levels is a regulatory tool which may indicate the
23 need for possible corrective action with respect to the
24 insurer, and is not intended as a means to rank insurers
25 generally. Therefore, except as otherwise required under
26 the provisions of this article, the making, publishing,
27 disseminating, circulating or placing before the public, or
28 causing, directly or indirectly to be made, published,
29 disseminated, circulated or placed before the public, in a
30 newspaper, magazine or other publication, or in the form
31 of a notice, circular, pamphlet, letter or poster, or over any
32 radio or television station, or in any other way, an
33 advertisement, announcement or statement containing an
34 assertion, representation or statement with regard to the
35 RBC levels of any insurer, or of any component derived in
36 the calculation, by any insurer, agent, broker or other
37 person engaged in any manner in the insurance business
38 would be misleading and is therefore prohibited:
39 *Provided*, That if any materially false statement with
40 respect to the comparison regarding an insurer's total
41 adjusted capital to its RBC levels (or any of them) or an
42 inappropriate comparison of any other amount to the
43 insurers RBC levels is published in any written publication
44 and the insurer is able to demonstrate to the commissioner
45 with substantial proof the falsity of such statement, or the
46 inappropriateness, as the case may be, then the insurer
47 may publish an announcement in a written publication if
48 the sole purpose of the announcement is to rebut the
49 materially false statement.

50 (c) It is the further judgment of the Legislature that
51 the RBC instructions, RBC reports, adjusted RBC reports,
52 RBC plans and revised RBC plans are intended solely for
53 use by the commissioner in monitoring the solvency of
54 insurers and the need for possible corrective action with
55 respect to insurers and shall not be used by the
56 commissioner for ratemaking nor considered or
57 introduced as evidence in any rate proceeding nor used by
58 the commissioner to calculate or derive any elements of an
59 appropriate premium level or rate of return for any line of
60 insurance which an insurer or any affiliate is authorized to

61 write.

§33-40-9. Supplemental provisions; rules; exemption.

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

6 (b) The commissioner may adopt reasonable rules
7 necessary for the implementation of this article.

8 (c) The commissioner may exempt from the
9 application of this article any domestic property and
10 casualty insurer which:

11 (1) Writes direct business only in this state;

12 (2) Writes direct annual premiums of two million
13 dollars or less; and

14 (3) Assumes no reinsurance in excess of five percent
15 of direct premium written.

16 (d) A domestic farmers mutual fire insurance
17 company is exempt from the provisions of this article
18 when:

19 (1) It writes direct business only in this state;

20 (2) It writes direct annual premiums of two million
21 dollars or less; and

22 (3) It assumes no reinsurance in excess of five percent
23 of direct premium written.

§33-40-10. Foreign insurers.

1 (a) Any foreign insurer shall, upon the written request
2 of the commissioner, submit to the commissioner an RBC
3 report as of the end of the calendar year just ended the
4 later of:

5 (1) The date an RBC report would be required to be
6 filed by a domestic insurer under this act; or

7 (2) Fifteen days after the request is received by the
8 foreign insurer.

9 Any foreign insurer shall, at the written request of the
10 commissioner, promptly submit to the commissioner a
11 copy of any RBC plan that is filed with the insurance
12 commissioner of any other state.

13 (b) In the event of a company action level event,
14 regulatory action level event or authorized control level
15 event with respect to any foreign insurer as determined
16 under the RBC statute applicable in the state of domicile
17 of the insurer (or, if no RBC statute is in force in that state,
18 under the provisions of this article), if the insurance
19 commissioner of the state of domicile of the foreign
20 insurer fails to require the foreign insurer to file an RBC
21 plan in the manner specified under that state's RBC statute
22 (or, if no RBC statute is in force in that state, under section
23 three of this article), the commissioner may require the
24 foreign insurer to file an RBC plan with the commissioner.
25 In such event, the failure of the foreign insurer to file an
26 RBC plan with the commissioner shall be grounds to order
27 the insurer to cease and desist from writing new insurance
28 business in this state.

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

§33-40-11. Immunity.

1 There shall be no liability on the part of, and no cause
2 of action shall arise against, the commissioner or the
3 agency of the insurance commission or its employees or

4 agents for any action taken by them in the performance of
5 their powers and duties under this article.

§33-40-12. Notices.

1 All notices by the commissioner to an insurer which
2 may result in regulatory action hereunder shall be
3 effective upon dispatch if transmitted by registered or
4 certified mail, or in the case of any other transmission
5 shall be effective upon the insurer's receipt of such notice.

§33-40-13. Effective date.

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

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

Randy Schorou

Chairman Senate Committee

Ernest C Moore

Chairman House Committee

Originating in the House.

Takes effect January 1, 1996.

Harrell Edwards

Clerk of the Senate

Donald A. Vopp

Clerk of the House of Delegates

Carl Ray Tomblin

President of the Senate

Robert C. Byrd

Speaker of the House of Delegates

The within is approved this the 11th day of March, 1995.

Gaston Caperton

Governor



PRESENTED TO THE

GOVERNOR

Date 3/8/95

Time 2:12pm