WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED

HOUSE BILL No. 2505

(By Delegate Adams, Gallagher, Nesbitt)

Passed March 2, 1995

In Effect January 1, 1996
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.


1 In order to assist the commissioner in the regulation of insurers in this state, it is the duty of the commissioner to maintain, as confidential, any documents or information received from the national association of insurance commissioners or insurance departments of other states which is confidential in such other jurisdictions. It is within the power of the commissioner to share information, including otherwise confidential information, with the national association of insurance commissioners or insurance departments of other states: Provided, That such other jurisdictions agree to maintain the same level of confidentiality as is available under this statute.

ARTICLE 7. ASSETS AND LIABILITIES.


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

3 (b) Reserve valuation. — The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when
such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and for all valid legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

(C) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by
(D) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

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

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

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

(H) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder: Provided, That the memorandum or other material may otherwise be released by the commissioner: (i) With the written consent of the company; or (ii) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential
memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(d) Computation of minimum standards. — Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all such policies and contracts issued prior to the effective date of this section shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all such policies and contracts issued on or after the effective date of this section shall be the commissioners reserve valuation methods defined in subsections (g), (h), (k) and (m) of this section, three and one-half percent interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after the first day of June, one thousand nine hundred seventy-four, four percent interest for such policies issued prior to the sixth day of April, one thousand nine hundred seventy-seven, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on and after the sixth day of April, one thousand nine hundred seventy-seven, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies: The commissioners 1941 standard ordinary mortality table for such policies issued prior to the operative date of subsection (4a), section thirty, article thirteen of this chapter, the commissioners 1958 standard ordinary mortality table for such policies issued on or after the operative date of said subsection, and prior to the operative date of subsection (4c) of said section: Provided, That for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section
may be calculated according to an age not more than six
years younger than the actual age of the insured; and for
such policies issued on or after the operative date of
subsection (4c), section thirty, article thirteen of this
chapter: (i) The commissioners 1980 standard ordinary
mortality table; or (ii) at the election of the company for
any one or more specified plans of life insurance, the
commissioners 1980 standard ordinary mortality table
with ten-year select mortality factors; or (iii) any ordinary
mortality table, adopted after the year one thousand nine
hundred eighty by the national association of insurance
 commissioners, that is approved by regulation promul-
gated by the commissioner for use in determining the
minimum standard of valuation for such policies.

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

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

(4) For group annuity and pure endowment contracts,
excluding any disability and accidental death benefits in
such policies: The group annuity mortality table for 1951,
any modification of such table approved by the
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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
indemnity mortality table; and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the inter-company double indemnity mortality table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies.

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

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

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

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

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

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

(5) For all annuities and pure endowments purchased on or after the sixth day of April, one thousand nine hundred seventy-seven, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts: The 1971 group annuity mortality table, or any group annuity mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and
one-half percent interest.

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

(f) Computation of minimum standard by calendar year of issue.

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

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

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

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

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

(2) Calendar year statutory valuation interest rates. —

(A) The calendar year statutory valuation interest
rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

(i) For life insurance,

\[ I = 0.03 + W(R_1 - 0.03) + \frac{W}{2}(R_2 - 0.09); \]

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

\[ I = 0.03 + W(R - 0.03) \]

where \( R_1 \) is the lesser of \( R \) and 0.09,

\( R_2 \) is the greater of \( R \) and 0.09,

\( R \) is the reference interest rate defined in this subsection, and \( W \) is the weighting factor defined in this section;

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

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

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in
(B) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year.

For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for the year one thousand nine hundred eighty (using the reference interest rate defined for the year one thousand nine hundred seventy-nine) and shall be determined for each subsequent calendar year regardless of when subsection (4c), section thirty, article thirteen of this chapter, as amended, becomes operative.

(3) **Weighting factors.** —

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

(i) **Weighting Factors for Life Insurance:**

<table>
<thead>
<tr>
<th>Guarantee</th>
<th>Weighting Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration</td>
<td></td>
</tr>
<tr>
<td>(Years)</td>
<td></td>
</tr>
<tr>
<td>10 or less</td>
<td>.50</td>
</tr>
<tr>
<td>More than 10, but not more than 20</td>
<td>.45</td>
</tr>
<tr>
<td>More than 20</td>
<td>.35</td>
</tr>
</tbody>
</table>

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;
(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80;

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

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

<table>
<thead>
<tr>
<th>Guarantee Duration (Years)</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 or less</td>
<td>.80</td>
<td>.60</td>
<td>.50</td>
</tr>
<tr>
<td>More than 5, but not more than 10</td>
<td>.75</td>
<td>.60</td>
<td>.50</td>
</tr>
<tr>
<td>More than 10, but not more than 20</td>
<td>.65</td>
<td>.50</td>
<td>.45</td>
</tr>
<tr>
<td>More than 20</td>
<td>.45</td>
<td>.35</td>
<td>.35</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Weighting Factor for Plan Type A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>.15</td>
<td>.25</td>
<td>.05</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>-plan_type</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>.05</td>
<td>.05</td>
<td>.05</td>
<td></td>
</tr>
</tbody>
</table>

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

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

Plan Type A:

At any time policyholder may withdraw funds only:

(1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted;

Plan Type B:

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

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

(VI) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) Reference interest rate. —

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

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, inc.
(ii) For single premium immediate annuities and for
annuity benefits involving life contingencies arising from
other annuities with cash settlement options and
guaranteed interest contracts with cash settlement options,
the average over a period of twelve months, ending on the
thirtieth day of June of the calendar year of issue or year
of purchase, of the monthly average of the composite
yield on seasoned corporate bonds, as published by
Moody's investors service, inc.

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

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

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

(vi) For other annuities with cash settlement options
and guaranteed interest contracts with cash settlement
options, valued on a change in fund basis, except as stated
in subparagraph (ii) of this paragraph, the average over a
period of twelve months, ending on the thirtieth day of
June of the calendar year of the change in the fund, of the
monthly average of the composite yield on seasoned
corporate bonds, as published by Moody's investors
service, inc.

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

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

(g) Reserve valuation method — life insurance and
dowment benefits.

Except as otherwise provided in subsections (h), (k)
and (m) of this section, reserves according to the
commissioners reserve valuation method, for the life
insurance and endowment benefits of policies providing
for a uniform amount of insurance and requiring the
payment of uniform premiums shall be the excess, if any,
of the present value, at the date of valuation, of such future
guaranteed benefits provided for by such policies, over the
then present value of any future modified net premiums
therefor. The modified net premiums for any such policy
shall be such uniform percentage of the respective
contract premiums for such benefits that the present value,
at the date of issue of the policy, of all such modified net
premiums shall be equal to the sum of the then present
value of such benefits provided for by the policy and the
excess of subdivision (1) over subdivision (2), as follows:

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

(2) A net one year term premium for such benefits provided for in the first policy year: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of such policy anniversary calculated as described in that paragraph, but with: (i) The value defined in subdivision (1) of that paragraph being reduced by fifteen percent of the amount of such excess first year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on such date as an endowment; and (iv) the cash surrender value provided on such date being

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

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

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

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

Reserves according to the commissioners' annuity
reserve method for benefits under annuity or pure
endowment contracts, excluding any disability and
accidental death benefits in such contracts, shall be the
greatest of the respective excesses of the present values, at
the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(i) Minimum reserves. —

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

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

(j) Optional reserve calculation. —

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

Reserves for any category of policies, contracts or benefits as established by the commissioner, issued on or
after the effective date of this section, may be calculated, at
the option of the company, according to any standards
which produce greater aggregate reserves for such
category than those calculated according to the minimum
standard herein provided, but the rate or rates of interest
used for policies and contracts, other than annuity and
pure endowment contracts, shall not be higher than the
corresponding rate or rates of interest used in calculating
any nonforfeiture benefits provided therein.

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

Reserve calculation — valuation net premium
exceeding the gross premium charged. —

If in any contract year the gross premium charged by
any life insurance company on any policy or contract is
less than the valuation net premium for the policy or
contract calculated by the method used in calculating the
reserve thereon but using the minimum valuation
standards of mortality and rate of interest, the minimum
reserve required for such policy or contract shall be the
greater of either the reserve calculated according to the
mortality table, rate of interest, and method actually used
for such policy or contract, or the reserve calculated by
the method actually used for such policy or contract but
using the minimum valuation standards of mortality and
rate of interest and replacing the valuation net premium
by the actual gross premium in each contract year for
which the valuation net premium exceeds the actual gross
premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in subsections (d) and (f) of this section: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (g) of this section, ignoring the second paragraph of said subsection. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with said subsection, including the second paragraph of that section, and the minimum reserve calculated in accordance with this subsection.

(i) Reserve calculation — indeterminate premium plans. —

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

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

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

(m) Minimum standards for health (disability,
accident and sickness) plans. —

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

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

(o) Effective Date. —

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

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


1 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 said article 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 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 of said article, a
farmers' mutual insurance company shall have the option
of offering mine subsidence coverage to all of its
policyholders but shall not be required to do so; article
thirty-three (annual audited financial report); article
thirty-four (administrative supervision); article thirty-
four-a (standards and commissioner's authority for
companies deemed to be in hazardous financial
condition); article thirty-five (criminal sanctions for
failure to report impairment); article thirty-six (business
transacted with producer-controlled property/casualty
insurer); article thirty-seven (managing general agents);
article thirty-nine (disclosure of material transactions); and
article forty (risk-based capital for insurers); but only to
the extent these provisions are not inconsistent with the
provisions of this article.

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

§33-40-1. Definitions.

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

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

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

(c) "Commissioner" means the insurance commis-
ioner of the state of West Virginia.

(d) "Domestic insurer" means any insurance company
or farmers' mutual fire insurance company domiciled in 
this state.

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

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

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

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

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

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

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

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

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

(3) "Authorized control level RBC" means the number
determined under the risk-based capital formula in accordance with the RBC instructions;

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

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

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

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

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

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

§33-40-2. RBC reports.

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

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

(2) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its 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
helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this article.

(e) If a domestic insurer files an RBC report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC 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. An RBC report as so adjusted is referred to as an "Adjusted RBC Report".

§33-40-3. Company action level event.

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

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

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

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

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

(3) If, pursuant to section seven of this article, an insurer challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
(b) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan which shall:

1. Identify the conditions which contribute to the company action level event;

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

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

4. Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

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

(c) The RBC plan shall be submitted:

1. Within forty-five days of the company action level event; or

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

(d) Within sixty days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC
plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

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

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

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

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

(1) Such state has an RBC provision substantially similar to 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, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:
(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or
(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (c) and (d) of this section.

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

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

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

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

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

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

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

(A) The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and
(B) Such notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under section seven of this article;

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

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

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

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

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

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

(c) In determining corrective actions, the commis-
sioner 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 RBC instructions. The RBC plan or revised RBC plan shall be submitted:

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

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

(3) If the insurer challenges a revised RBC plan pursuant to section seven of this article and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer 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 RBC plan or revised RBC 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 affected insurer or such other party as directed by the commissioner.

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

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

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

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

(3) If, pursuant to section seven of this article, the insurer challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification by the commissioner to the insurer 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 the insurer has not challenged the corrective order) under section seven of this article; or

(5) If the insurer has challenged a corrective order under section seven of this article and the commissioner has, after a hearing, rejected the 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 under section four of this article regarding an insurer with respect to which 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 under 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 under 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 RBC report, the
insurer shall be entitled to such protections as are afforded
to insurers under the provisions of article ten of this
chapter pertaining to summary proceedings.

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

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

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

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

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

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

(1) With respect to a life insurer, the commissioner
shall take such actions as are necessary to place the insurer
under regulatory control under article ten of this chapter.
In that event, the mandatory control level event shall be
deemed sufficient grounds for the commissioner to take
action under said article, and the commissioner shall have
the rights, powers and duties with respect to the insurer as
are set forth in said article. If the commissioner takes
actions pursuant to an adjusted RBC report, the insurer
shall be entitled to the protections 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 the
commissioner finds there is a reasonable expectation that
the mandatory control level event may be eliminated
within the ninety-day period.

(2) With respect to a property and casualty insurer, the
commissioner shall take such actions as are necessary to
place the insurer under regulatory control under article
ten of this chapter, or, in the case of an insurer which is
writing no business and which is running-off its existing
business, may allow the insurer to continue its run-off
under the supervision of the commissioner. In either
event, the mandatory control level event shall be deemed
sufficient grounds for the commissioner to take action
under said article and the commissioner shall have the
rights, powers and duties with respect to the insurer as are
set forth in said article. If the commissioner takes actions
pursuant to an adjusted RBC report, the insurer shall be
entitled to the protections 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 the
commissioner finds there is a reasonable expectation that
the mandatory control level event may be eliminated
within the ninety-day period.


Insurers shall have the right to a confidential
departmental hearing, on a record, at which the insurer
may challenge any determination or action by 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
notification from the commissioner.

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

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

(1) The insurer's RBC plan or revised RBC plan is
unsatisfactory; and
(2) Such notification constitutes a regulatory action level event with respect to such insurer; or

(c) Notification to any insurer by the commissioner that the insurer has failed to adhere to its RBC plan or revised RBC 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 RBC plan or revised RBC plan; or

(d) Notification to an insurer by the commissioner 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, which date shall be no less than fifteen nor more than forty-five days after the date of the insurer's request.

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

(a) All RBC reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and RBC 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 confidential 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 article 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 RBC 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 statement containing an assertion, representation or statement with regard to the RBC 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 RBC levels (or any of them) or an inappropriate comparison of any other amount to the insurers RBC 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.

(c) It is the further judgment of the Legislature that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to
(a) 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.
(b) The commissioner may adopt reasonable rules necessary for the implementation of this article.
(c) The commissioner may exempt from the application of this article any domestic property and casualty insurer which:
   (1) Writes direct business only in this state;
   (2) Writes direct annual premiums of two million dollars or less; and
   (3) Assumes no reinsurance in excess of five percent of direct premium written.
(d) A domestic farmers mutual fire insurance company is exempt from the provisions of this article when:
   (1) It writes direct business only in this state;
   (2) It writes direct annual premiums of two million dollars or less; and
   (3) It assumes no reinsurance in excess of five percent of direct premium written.

§33-40-10. Foreign insurers.
(a) Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended the later of:
   (1) The date an RBC report would be required to be filed by a domestic insurer under this act; or
(2) Fifteen days after the request is received by the foreign insurer.

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

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

(c) In the event of a mandatory control level event with respect to any 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 under 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.


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

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


This article shall become effective 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

Originating in the House.

Takes effect January 1, 1996.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 14th
day of March, 1995.

Governor