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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

HOUSE BILL No. 4387

(By Delegates Gallagher, Adkins, Cann,
Tillis, Douglas, Thompson and Greear)



Passed February 15, 1996

In Effect ninety days from Passage

ENROLLED

H. B. 4387

(BY DELEGATES GALLAGHER, ADKINS, CANN, TILLIS, DOUGLAS,
THOMPSON AND GREAR)

[Passed February 15, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen-b, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; insurance commissioner; reinsurance agreements; and reduction of liability.

Be it enacted by the Legislature of West Virginia:

That section fifteen-b, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15b. Reinsurance agreements; reduction of liability; requirements.

1 (a) This section applies to all domestic life insurers,
2 domestic accident and sickness insurers, and domestic
3 property and casualty insurers with respect to their acci-
4 dent and sickness business. This section also applies to all
5 other licensed life insurers, accident and sickness insurers,
6 and property and casualty insurers with respect to their
7 accident and sickness business who are not subject to a
8 substantially similar law or regulation in their domiciliary

9 state. This section does not apply to assumption reinsur-
10 ance, yearly renewable term reinsurance, or certain non-
11 proportional reinsurance such as stop loss or catastrophic
12 reinsurance.

13 (b) An insurer subject to this section shall not, for
14 reinsurance ceded, reduce any liability or establish any
15 asset in any financial statement filed with the commission-
16 er if, by the terms of the reinsurance agreement, in sub-
17 stance or effect, any of the following conditions exist:

18 (1) The primary effect of the reinsurance agreement
19 is to transfer deficiency reserves or excess interest reserves
20 to the books of the reinsurer for a "risk charge" and the
21 agreement does not provide for significant participation
22 by the reinsurer in one or more of the following risks:
23 Mortality, morbidity, investment or surrender benefit;

24 (2) The reserve credit taken by the ceding insurer is
25 not in compliance with this chapter, including actuarial
26 interpretations or standards adopted by the commissioner;

27 (3) The reserve credit taken by the ceding insurer is
28 greater than the underlying reserve of the ceding compa-
29 ny supporting the policy obligation transferred under the
30 reinsurance agreement;

31 (4) The ceding insurer is required to reimburse the
32 reinsurer for negative experience under the reinsurance
33 agreement: *Provided*, That neither offsetting experience
34 refunds against current and prior years' losses nor pay-
35 ment by the ceding insurer of an amount equal to current
36 and prior years' losses upon voluntary termination of
37 in-force reinsurance by that ceding insurer shall be con-
38 sidered such a reimbursement to the reinsurer for negative
39 experience;

40 (5) The ceding insurer can be deprived of surplus at
41 the reinsurer's option or automatically upon the occur-
42 rence of some event, such as the insolvency of the ceding
43 insurer: *Provided*, That termination of the reinsurance
44 agreement by the reinsurer for nonpayment of reinsur-

45 ance premiums shall not be considered to be such a depri-
46 vation of surplus;

47 (6) The ceding insurer shall, at specific points in time
48 scheduled in the agreement, terminate or automatically
49 recapture all or part of the reinsurance ceded;

50 (7) No cash payment is due from the reinsurer,
51 throughout the lifetime of the reinsurance agreement, with
52 all settlements prior to the termination date of the agree-
53 ment made only in a "reinsurance account," and no funds
54 in such account are available for the payment of benefits;

55 (8) The reinsurance agreement involves the possible
56 payment by the ceding insurer to the reinsurer of amounts
57 other than from income reasonably expected from the
58 reinsured policies; or

59 (9) Any other conditions specified by rules promul-
60 gated by the commissioner pursuant to chapter
61 twenty-nine-a of this code.

62 (c) Notwithstanding the provisions of subsection (b)
63 of this section, an insurer subject to this article may, with
64 the prior approval of the commissioner, take such reserve
65 credit as the commissioner may deem consistent with this
66 chapter, including actuarial interpretations or standards
67 adopted by the commissioner.

68 (d) A reinsurance agreement or amendment to any
69 agreement shall not be used to reduce any liability or to
70 establish any asset in any financial statement filed with the
71 commissioner, unless the agreement, amendment or a
72 letter of intent has been duly executed by both parties no
73 later than the "as of date" of the financial statement.

74 (e) In the case of a letter of intent, a reinsurance
75 agreement or an amendment to a reinsurance agreement
76 shall be executed within a reasonable period of time, not
77 exceeding ninety days from the execution date of the
78 letter of intent, in order for credit to be granted for the
79 reinsurance ceded.

80 (f) Life insurers subject to this section may continue
81 to reduce liabilities or establish assets in financial state-
82 ments filed with the commissioner for reinsurance ceded
83 under types of reinsurance agreements described in sub-
84 section (b) of this section: *Provided*, That:

85 (1) The agreements were executed and in force prior
86 to the effective date of this section;

87 (2) No new business is ceded under the agreements
88 after the effective date of this section;

89 (3) The reduction of the liability or the asset estab-
90 lished for the reinsurance ceded is reduced to zero by the
91 thirty-first day of December, one thousand nine hundred
92 ninety-four, or such later date approved by the commis-
93 sioner as a result of an application made by the ceding
94 insurer prior to the thirty-first day of December, one thou-
95 sand nine hundred ninety-two;

96 (4) The reduction of the liability or the establishment
97 of the asset is otherwise permissible under all other appli-
98 cable provisions of this chapter, including actuarial inter-
99 pretations or standards adopted by the commissioner; and

100 (5) The commissioner is notified, within ninety days
101 after the effective date of this section, of the existence of
102 such reinsurance agreements and all corresponding credits
103 taken in the ceding insurer's annual statement for the year
104 one thousand nine hundred ninety-one.

105 (g) Accident and sickness insurers and property and
106 casualty insurers subject to this section shall be in compli-
107 ance with the requirements of this section, with respect to
108 their accident and sickness business, pursuant to such
109 terms and conditions as are contained in the legislative
110 rule to be promulgated by the commissioner.

111 (h) The commissioner shall promulgate a rule pursu-
112 ant to chapter twenty-nine-a of this code for the imple-
113 mentation and administration of this section on or before
114 the first day of July, one thousand nine hundred
115 ninety-six.

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

Randy Schooner
Chairman Senate Committee

Rudy Deard
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.
Carroll E. Adams
Clerk of the Senate

Bregory M. Gray
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Bob Coburn
Speaker of the House of Delegates

The within is approved this the 28th
day of February, 1996.

Garston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 2/22/96

Time 2:03 pm