

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000

ENROLLED

House Bill No. 4500

(By Delegates Beane, Mahan and Hutchins)

Passed March 7, 2000

In Effect Ninety Days from Passage

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H. B. 4500

(BY DELEGATES BEANE, MAHAN AND HUTCHINS)

[Passed March 7, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three-a, all relating to eliminating trade barriers affecting insurers and producers; the prohibition against licensing insurance companies owned by state or foreign governments; and establishing a process for licensing insurers organized under the laws of foreign countries.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article three-a, all to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-2. Qualifications for license.

1 (a) To qualify for a license to transact insurance in West
2 Virginia an insurer must be otherwise in compliance with the
3 provisions of this chapter and with its charter, and must be an
4 incorporated stock insurer, or an incorporated mutual insurer or
5 a reciprocal insurer.

6 (b) No foreign insurer may be authorized to transact
7 insurance in this state if it is domiciled in a state that does not
8 have reserve requirements that are equal to or greater than those
9 required by article seven of this chapter, as applicable to the
10 kind or kinds of insurance transacted by the insurer, wherever
11 transacted in the United States of America, or which transacts
12 business anywhere in the United States of America on the
13 assessment plan, the stipulated premium plan or any similar
14 plan.

15 (c) No insurer may be authorized to transact a kind of
16 insurance in this state unless duly authorized or qualified to
17 transact such insurance in the state or country of its domicile.

18 (d) No insurer may be authorized to transact in this state
19 any kind of insurance which is not defined in section ten, article
20 one of this chapter.

21 (e) No authority to transact insurance may be granted or
22 continued to any insurer that is in arrears to the state for fees,
23 licenses, taxes, assessments, fines or penalties accrued on
24 insurance previously transacted in this state.

ARTICLE 3A. STATE OF ENTRY FOR FOREIGN INSURERS.

§33-3A-1. Definitions.

1 (a) "Non-U.S. insurer" means an insurer organized under
2 the laws of a foreign country.

3 (b) "United States branch" or "U.S. branch" means the
4 business unit through which business is transacted within the

5 United States by a non-U.S. insurer and the assets and liabilities
6 of the insurer within the United States pertaining to such
7 business.

8 (c) "Home jurisdiction" means the foreign country under
9 whose laws the non-U.S. insurer has been organized.

§33-3A-2. Scope.

1 This article applies to a U.S. branch using this state as a
2 state of entry to transact insurance in the United States. The
3 U.S. branch shall also be subject to all state laws applicable to
4 an insurer domiciled in this state unless otherwise provided.

§33-3A-3. Authorization of entry.

1 (a) A non-U.S. insurer may use this state as a state of entry
2 to transact insurance in the United States through a U.S. branch
3 by:

4 (1) Qualifying as an insurer to do business in this state; and

5 (2) Establishing a trust account, pursuant to a trust agree-
6 ment approved by the commissioner with a U.S. bank approved
7 by the commissioner, in an amount at least equal to the mini-
8 mum capital and surplus or authorized control level risk based
9 capital, whichever is greater, required to be maintained by a
10 domestic insurer licensed to transact the same kind of insur-
11 ance.

12 (b) Before authorizing the entry through this state of a U.S.
13 branch of any non-U.S. insurer, the commissioner shall require
14 the non-U.S. insurer, in addition to meeting the requirements of
15 section five of this article and any other requirement of this
16 chapter:

17 (1) To submit a copy of its charter and bylaws, if any,
18 currently in force, and any other documents necessary to show

19 the kinds of business which it is empowered to transact in its
20 home jurisdiction, attested to as accurate and complete by the
21 insurance supervisory official of its home jurisdiction; and a
22 full statement, subscribed and affirmed as true under the
23 penalties of perjury by two officers, or equivalent responsible
24 representatives, in a manner as the commissioner shall pre-
25 scribe, of its financial conditions as of the close of its latest
26 fiscal year, showing its assets, liabilities, income disbursements,
27 business transacted and other facts required to be shown in its
28 annual statement, as reported to the insurance supervisory
29 official of its home jurisdiction; an English language transla-
30 tion, as necessary, of any other documents required herein; and

31 (2) To submit to an examination of the insurer's affairs at
32 its principal office within the United States. However, the
33 commissioner may instead accept a report of the insurance
34 supervisory official of the insurer's home jurisdiction.

§33-3A-4. Maintenance of trust account.

1 The assets in the trust account shall be known as "trusteed
2 assets" and shall at all times be in an amount equal to the U.S.
3 branch's reserves and other liabilities plus the minimum capital
4 and surplus, or authorized control level risk based capital,
5 whichever is greater, required to be maintained by a domestic
6 insurer licensed to do the same kind of insurance.

§33-3A-5. Requirements for trust agreement.

1 (a) The deed of trust and all amendments thereto shall be
2 authenticated in a form and manner as the commissioner may
3 prescribe and shall not be effective unless approved by the
4 commissioner upon a finding that:

5 (1) A deed of trust or its amendments are sufficient in form
6 and in conformity with law;

7 (2) The trustee or trustees are eligible as such; and

8 (3) The deed of trust is adequate to protect the interests of
9 the beneficiaries of the trust.

10 (b) If at any time the commissioner finds, after reasonable
11 notice and hearing, that the requisites for the approval no longer
12 exist, the commissioner may withdraw approval.

13 (c) The commissioner may from time to time approve
14 modifications of, or variations in any deed of trust, which in the
15 commissioner's judgment are not prejudicial to the interests of
16 the people of this state or the United States policyholders and
17 creditors of the U.S. branch.

18 (d) The deed of trust shall contain provisions which:

19 (1) Vest legal title to trusteed assets in the trustees, and
20 their successors lawfully appointed;

21 (2) Require that all assets deposited in the trust shall be
22 continuously kept within the United States;

23 (3) Provide for substitution of a new trustee or trustees in
24 case of a vacancy by death; resignation or otherwise, subject to
25 the approval of the commissioner;

26 (4) Require that the trustee or trustees shall continuously
27 maintain a record at all times sufficient to identify the assets of
28 the fund;

29 (5) Require that the trusteed assets shall consist of cash
30 and/or investments eligible for investment of the funds of
31 domestic insurers and accrued interest thereon if collectible by
32 the trustee;

33 (6) Require that the trust shall be for the exclusive benefit,
34 security and protection of the policyholders, or policyholders

35 and creditors, of the U.S. branch in the United States and that
36 it shall be maintained as long as there is outstanding any
37 liability of the non-U.S. insurer arising out of its insurance
38 transactions in the United States; and

39 (7) Provide, in substance, that no withdrawals of assets,
40 other than income as specified in subsection (e) of this section
41 shall be made or permitted by the trustee or trustees without the
42 approval of the commissioner except to:

43 (A) Make deposits required by law in any state for the
44 security or benefit of all policyholders, or policyholders and
45 creditors, of the U.S. branch in the United States;

46 (B) Substitute other assets permitted by law and at least
47 equal in value and quality to those withdrawn, upon the specific
48 written direction of the United States manager of the U.S.
49 branch when duly empowered and acting pursuant to either
50 general or specific written authority previously given or
51 delegated by the board of directors; or

52 (C) Transfer such assets to an official liquidator or
53 rehabilitator pursuant to an order of a court of competent
54 jurisdiction.

55 (e) The deed of trust may provide that income, earnings,
56 dividends or interest accumulations of the assets of the fund
57 may be paid over the United States manager of the U.S. branch
58 upon request, provided that the total trustee assets shall not
59 thereby be less than the amount required to be maintained
60 pursuant to section four of this article.

61 (f) Upon withdrawal of trustee assets deposited in another
62 state in which the insurer is authorized to do business, it shall
63 be sufficient if the deed of trust requires similar written
64 approval of the insurance supervising official of that state in
65 lieu of approval of the commissioner provided that the total

66 trustee assets shall not thereby be less than the amount
67 required to be maintained pursuant to section four of this
68 article. In all such cases the U.S. branch shall notify the
69 commissioner in writing of the nature and extent of the with-
70 drawal.

71 (g) The commissioner may from time to time:

72 (1) Make examinations of the trustee assets of any
73 authorized U.S. branch at the insurer's expense; and

74 (2) Require the trustee or trustees to file a statement, in
75 such form as the commissioner may prescribe, certifying the
76 assets of the trust fund and the amounts thereof.

77 (h) Refusal or neglect of any trustee to comply with the
78 foregoing requirements shall be grounds for the revocation of
79 the insurer's license or the liquidation of its United States
80 branch.

**§33-3A-6. Reporting requirements for U.S. branches of non-U.S.
insurers.**

1 (a) In addition to other requirements of this article, every
2 authorized U.S. branch shall, not later than the first day of
3 March in each year and forty-five days after the end of each of
4 the first three calendar-year quarters, file with the commissioner
5 and with the National Association of Insurance Commissioners
6 (NAIC):

7 (1) Annual and quarterly statements of the business
8 transacted within the U.S. and the assets held by or for it within
9 the United States for the protection of United States policyhold-
10 ers and creditors within the United States, and of the liabilities
11 incurred against the assets. The forms shall not contain any
12 statement in regard to its assets and business elsewhere. The
13 statements shall be in the same format required of an insurer

14 domiciled in the U.S. branch's state of entry state and licensed
15 to write the same kinds of insurance; and

16 (2) A statement of trustee surplus, in such form as the
17 commissioner may prescribe, as of the end of the same period
18 covered by the statement filed pursuant to subdivision (1) of
19 this subsection. The aggregate value of the insurer's general
20 state deposits and trustee assets deposited with a trustee in
21 compliance with section five of this article, plus accrued
22 investment income thereon where the interest is collected by the
23 states for trustees, less the aggregate net amount of all of its
24 reserves and other liabilities in the United States, as determined
25 in accordance with this section, shall be known as its "trustee
26 surplus" in the United States. In determining the net amount of
27 the U.S. branch's liabilities in the United States to be reported
28 in the statement of trustee surplus, the U.S. branch shall make
29 adjustments to total liabilities reported on the accompanying
30 annual or quarterly statement as follows:

31 (A) Add back liabilities used to offset admitted assets
32 reported in the accompanying quarterly or annual statement;
33 and

34 (B) Deduct:

35 (i) Unearned premiums on agent's balances or uncollected
36 premiums not more than ninety days past due;

37 (ii) Reinsurance on losses with authorized insurers, less
38 unpaid reinsurance premiums;

39 (iii) Reinsurance recoverables on paid losses from unautho-
40 rized insurers that are included as an asset in the annual
41 statement, but only to the extent a liability for unauthorized
42 recoverables is included in the liabilities report in the trustee
43 surplus statement;

44 (iv) Special state deposits held for the exclusive benefit of
45 policyholders, or policyholders and creditors, of any particular
46 state not exceeding net liabilities reports for that state;

47 (v) Secured accrued retrospective premiums;

48 (vi) If the insurer is a life insurer:

49 (I) The amount of its policy loans to policyholders within
50 the United States, not exceeding the amount of legal reserve
51 required on each policy; and

52 (II) The net amount of uncollected and deferred premiums;
53 and

54 (vii) Any other nontrusted asset which the commissioner
55 determines secures liabilities in a substantially similar manner;
56 and

57 (3) Any additional information that the commissioner may
58 require relating to the total business or assets, or any portion
59 thereof, of the non-U.S. insurer.

60 (b) The annual statement and trusted surplus statement
61 shall be signed and verified by the United States manager,
62 attorney-in-fact, or a duly empowered assistant United States
63 manager, of the U.S. branch. The items of securities and other
64 property held under trust deeds shall be certified in the trusted
65 surplus statement by the United States trustee or trustees.

66 (c) Every report on examination of a U.S. branch shall
67 include a trusted surplus statement as of the date of examina-
68 tion in addition to the general statement of the financial
69 condition of the U.S. branch.

§33-3A-7. Additional requirements for the U.S. branch license.

1 (a) Before issuing any new or renewal license to any U.S.
2 branch, the commissioner may require satisfactory proof, either

3 in the non-U.S. insurer's charter or by an agreement evidenced
4 by a duly certified resolution of its board of directors, or
5 otherwise as the commissioner may require, that the insurer will
6 not engage in any insurance business in contravention of the
7 provisions of this article or not authorized by its charter.

8 (b) The commissioner shall issue a renewal license to any
9 U.S. branch if satisfied, by proof as he or she considers satisfac-
10 tory, that the insurer is not delinquent with respect to any
11 requirement imposed by this article, and that its continuance in
12 business in this state will not be hazardous or prejudicial to the
13 best interests of the people of this state.

14 (c) No U.S. branch shall be licensed to do in this state any
15 kind of insurance business, or any combination of kinds of
16 insurance business, which are not permitted to be done by
17 domestic insurers licensed under the provisions of this article.
18 No U.S. branch shall be authorized to do an insurance business
19 in this state if it does anywhere within the United States any
20 kind of business other than an insurance business and the
21 business necessarily or properly incidental to the kind or kinds
22 of insurance business which it is authorized to do in this state.

23 (d) Except as otherwise specifically provided, no U.S.
24 branch, entering through this state or another state, shall be or
25 continue to be authorized to do an insurance business in this
26 state if it fails to comply substantially with any requirement or
27 limitation of this chapter, applicable to similar domestic
28 insurers hereafter organized, which in the judgment of the
29 commissioner is reasonably necessary to protect the interest of
30 the policyholders.

31 (e) No U.S. branch which does outside of this state any kind
32 or combination of kinds of insurance business not permitted to
33 be done in this state by similar domestic insurers hereafter
34 organized, shall be or continue to be authorized to do an

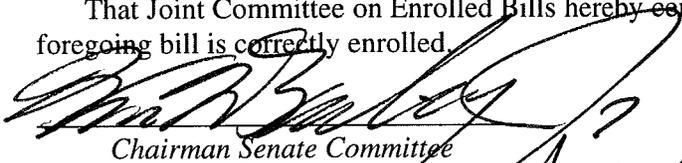
35 insurance business in this state, unless in the judgment of the
36 commissioner the doing of such kind or combination of kinds
37 of insurance business will not be prejudicial to the best interests
38 of the people of this state.

39 (f) No U.S. branch shall be or continue to be authorized to
40 do an insurance business in this state if it fails to keep full and
41 correct entries of its transactions, which shall at all times be
42 open to the inspection of persons invested by law with the
43 rights of inspection and be maintained in its principal office
44 within this state.

§33-3A-8. Authority of commissioner.

1 Whenever it appears to the commissioner from any annual
2 or quarterly statement or trustee surplus statement or any other
3 report that a U.S. branch's trustee surplus is reduced below
4 minimum capital and surplus, or the authorized control level
5 risk based capital, whichever is greater, required to be main-
6 tained by a domestic insurer licensed to transact the same kinds
7 of insurance, the commissioner may proceed against the insurer
8 pursuant to the provisions of sections ten and eleven of article
9 three of this chapter, and treat the insurer as one whose condi-
10 tion is such that its further transaction of business in the United
11 States will be hazardous to its policyholders, its creditors or the
12 public in the United States.

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



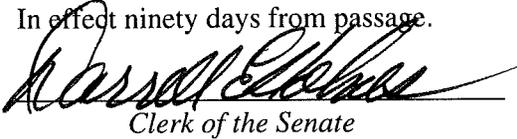
Chairman Senate Committee



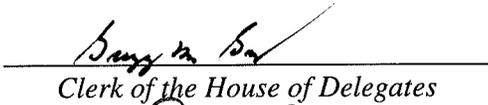
Chairman House Committee

Originating in the House.

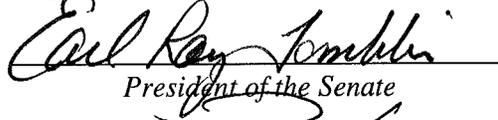
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

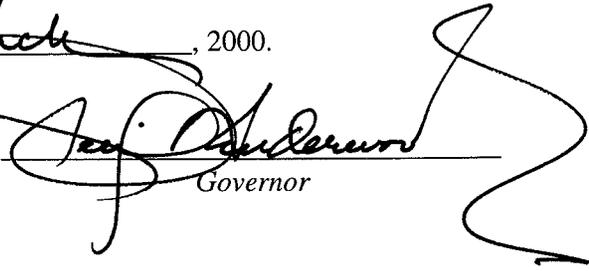


President of the Senate



Speaker of the House of Delegates

The within approved this the 13th
day of March, 2000.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/9/00

Time 10:00 am