WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED

SENATE BILL NO. 354

(By Senator Minard, et al)

PASSED March 8, 2003

In Effect ninety days from Passage
AN ACT to amend and reenact sections two, two-a, three and seven, article twenty-seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to insurance company holding systems and amendments required by the federal Gramm-Leach-Bliley Act; allowing insurance companies to acquire or be acquired by depository institutions; amending the period of time within which a public hearing and action thereon may be taken by the commissioner upon a statement filed by a person offering to acquire control of an insurance company; authorizing the commissioner to share confidential information gathered pursuant to said article with the board of governors of the federal reserve system or other appropriate federal banking agency; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That sections two, two-a, three and seven, article twenty-seven, chapter thirty-three of the code of West Virginia,
one thousand nine hundred and thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. INSURANCE COMPANY HOLDING SYSTEMS.


1 As used in this article:

2 (a) An "affiliate" of or person "affiliated" with a specific person is a person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

3 (b) "Commissioner" means the insurance commissioner, his or her deputies or the insurance department, as appropriate.

4 (c) "Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of any other person or controls or appoints a majority of the board of directors, voting members or similar governing body of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (l), section four of this article that control does not exist in fact. The commissioner may determine after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact notwithstanding the absence of a presumption to that effect.
(d) "Depository institution" means a bank or savings association as those terms are defined in section three of the federal deposit insurance act. The term "depository institution" does not include an insurance company.

(e) "Insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(f) "Insurer" means any person or persons or corporation, partnership or company authorized by the laws of this state to transact the business of insurance in this state, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

(g) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a depository institution or any other legal entity or any combination of the foregoing acting in concert, but does not include any securities broker performing no more than the usual and customary broker's function and holding less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.

(h) A "security holder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(i) A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(j) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.
§33-27-2a. Subsidiaries of insurers; authorization; investment authority; exemptions; qualifications; cessation of controls.

(a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business with the commissioner's prior approval:

1. Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
2. Acting as an insurance agent for its parent or for any of its parent's insurer subsidiaries;
3. Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent or any affiliate or subsidiary;
4. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
5. Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
6. Rendering investment advice to governments, government agencies, corporations or other organizations or groups;
7. Rendering other services related to the operations of an insurance business, including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;
8. Ownership and management of assets which the parent corporation could itself own or manage;
9. Acting as administrative agent for a governmental instrumentality which is performing an insurance function;
(10) Financing of insurance premiums, agents and other forms of consumer financing;

(11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business;

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section; and

(13) Organizing or acquiring one or more subsidiaries that are depository institutions.

(b) In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under any other provision of this chapter, a domestic insurer may also with the commissioner’s prior approval:

(1) Invest in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of such insurer’s assets or fifty percent of such insurer’s surplus as regards policyholders: Provided, That after such investments, the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded and there shall be included:

(A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations and other
securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer. Provided, That each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subdivision (1) of this subsection or in article eight of this chapter applicable to the insurer. For the purpose of this subdivision, "the total investment of the insurer" includes:

(A) Any direct investment by the insurer in an asset; and

(B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary;

(3) With the approval of the commissioner invest any greater amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries: Provided, That after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (b) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to such investments of insurers except section twenty-one, article eight of this chapter.
(d) Whether any investment pursuant to subsection (a) or (b) of this section meets the applicable requirements thereof is to be determined before such investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made such investment shall have met the requirements for investment under any other provision of this chapter and the insurer has notified the commissioner thereof.

§33-27-3. Acquisition of control of or merger with domestic insurer; filing requirements; statements; alternative filing material; approval by the commissioner; hearings; notice; mailings to shareholders; expenses; exemptions; violations and jurisdiction.

(a) Any person other than the issuer shall not make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer and a person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless at the time any such offer, request or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or
agreement is involved, the person has filed with the
commissioner and has sent to the insurer and, to the extent
permitted by applicable federal laws, rules and regula-
tions, the insurer has sent to its shareholders a statement
containing the information required by this section and
the offer, request, invitation, agreement or acquisition has
been approved by the commissioner in the manner herein-
after prescribed.

(b) For purposes of this section, a “domestic insurer”
includes any other person controlling a domestic insurer
unless the other person as determined by the commissioner
is either directly or through its affiliates primarily engaged
in business other than the business of insurance.

(c) The statement to be filed with the commissioner
hereunder shall be made under oath or affirmation and
shall contain the following information:

(1) The name and address of each person by whom or on
whose behalf the merger or other acquisition of control
referred to in subsection (a) of this section is to be effected
(hereinafter called “acquiring party”);

(2) If such person is an individual, his or her principal
occupation and all offices and positions held during the
past five years and any conviction of crimes other than
minor traffic violations during the past ten years;

(3) If such person is not an individual, a report of the
nature of its business operations during the past five years
or for such lesser period as the person and any predeces-
sors thereof shall have been in existence; an informative
description of the business intended to be done by the
person and the person’s subsidiaries; and a list of all
individuals who are or who have been selected to become
directors or executive officers of the person, or who
perform or will perform functions appropriate to those
positions. The list shall include for each individual the
information required by subdivision (2) of this subsection;
(4) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration: Provided, That where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing the statement so requests;

(5) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party (or for such lesser period as each acquiring party and any predecessors thereof shall have been in existence) and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement;

(6) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person or to make any other material change in its business or corporate structure or management;

(7) The number of shares of any security referred to in subsection (a) of this section which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement or acquisition referred to in said subsection and a statement as to the method by which the fairness of the proposal was arrived at;

(8) The amount of each class of any security referred to in subsection (a) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(9) A full description of any contracts, arrangements or understanding with respect to any security referred to in
subsection (a) of this section in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or guarantees of profits, division of losses or profits or the giving or withholding of proxies. The description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(10) A description of the purchase of any security referred to in subsection (a) of this section during the twelve calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid therefor;

(11) A description of any recommendations to purchase any security referred to in subsection (a) of this section made during the twelve calendar months preceding the filing of the statement by an acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;

(12) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (a) of this section and, if distributed, of additional soliciting material relating thereto;

(13) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) of this section for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto; and

(14) Any additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the public interest.
(d) If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions (1) through (14), inclusive, of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the commissioner may require that the information called for by subdivisions (1) through (14), inclusive, shall be given with respect to the corporation and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

(e) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to the insurer within two business days after the person learns of the change. The insurer shall send the amendment to its shareholders.

(f) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in said subsection may utilize such documents in furnishing the information called for by that statement.

(g) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this
section unless, after a public hearing thereon, he or she finds that any of the following conditions exists:

(1) After the change of control the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently authorized;

(2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(4) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section are unfair and unreasonable to the security holders of the insurer;

(5) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(6) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(7) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.
(h) The public hearing required by this section shall be held within forty days after the statement required by subsection (a) of this section is filed and at least fifteen days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons as may be designated by the commissioner. The insurer shall give notice of the public hearing to its security holders. The commissioner shall make a determination within twenty days after the conclusion of the hearing.

(i) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

(j) To the extent permitted by applicable federal laws, rules and regulations, all statements, amendments or other material filed pursuant to the provisions of this section and all notices of public hearings held pursuant to the provisions of this section shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(k) The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as: (1) Not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or (2) as otherwise not comprehended within the purposes of this section.

(l) The following are violations of this section:
(1) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b) of this section; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his or her approval thereto.

(m) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section and over all actions involving such person arising out of violations of this section and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the secretary of state to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the secretary of state and transmitted by registered or certified mail by the secretary of state to such person at his or her last known address.


All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section six of this article and all information reported pursuant to sections four and five of this article shall be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to insurance departments of other states and to the board of governors of the federal reserve system or other appropriate federal banking agency in accordance with section nineteen, article two of this chapter, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected
thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in any manner as he or she may consider appropriate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 27th Day of March, 2003.

Governor
PRESENTED TO THE
GOVERNOR

Date 3-19-03
Time 4:30 pm