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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

SENATE BILL NO. 356

(By Senator Minard, et al)

PASSED March 8, 2003

In Effect ninety days from **Passage**

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Senate Bill No. 356

(BY SENATORS MINARD, JENKINS, MINEAR AND SHARPE)

[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.

§33-27-2. Definitions.

1 As used in this article:

2 (a) An "affiliate" of or person "affiliated" with a
3 specific person is a person that, directly or indirectly
4 through one or more intermediaries, controls or is con-
5 trolled by or is under common control with the person
6 specified.

7 (b) "Commissioner" means the insurance commissioner,
8 his or her deputies or the insurance department, as appro-
9 priate.

10 (c) "Control" (including the terms "controlling",
11 "controlled by" and "under common control with") means
12 the possession, direct or indirect, of the power to direct or
13 cause the direction of the management and policies of a
14 person, whether through the ownership of voting securi-
15 ties, by contract other than a commercial contract for
16 goods or nonmanagement services or otherwise, unless the
17 power is the result of an official position with or corporate
18 office held by the person. Control shall be presumed to
19 exist if any person, directly or indirectly, owns, controls,
20 holds with the power to vote or holds proxies representing
21 ten percent or more of the voting securities of any other
22 person or controls or appoints a majority of the board of
23 directors, voting members or similar governing body of
24 any other person. This presumption may be rebutted by a
25 showing made in the manner provided by subsection (l),
26 section four of this article that control does not exist in
27 fact. The commissioner may determine after furnishing all
28 persons in interest notice and opportunity to be heard and
29 making specific findings of fact to support the determina-
30 tion that control exists in fact notwithstanding the absence
31 of a presumption to that effect.

32 (d) "Depository institution" means a bank or savings
33 association as those terms are defined in section three of
34 the federal deposit insurance act. The term "depository
35 institution" does not include an insurance company.

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

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

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

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

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

63 (j) "Voting security" includes any security convertible
64 into or evidencing a right to acquire a voting security.

§33-27-2a. Subsidiaries of insurers; authorization; investment authority; exemptions; qualifications; cessation of controls.

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

5 (1) Any kind of insurance business authorized by the
6 jurisdiction in which it is incorporated;

7 (2) Acting as an insurance agent for its parent or for any
8 of its parent's insurer subsidiaries;

9 (3) Investing, reinvesting or trading in securities for its
10 own account, that of its parent, any subsidiary of its
11 parent or any affiliate or subsidiary;

12 (4) Management of any investment company subject to
13 or registered pursuant to the Investment Company Act of
14 1940, as amended, including related sales and services;

15 (5) Acting as a broker-dealer subject to or registered
16 pursuant to the Securities Exchange Act of 1934, as
17 amended;

18 (6) Rendering investment advice to governments, govern-
19 ment agencies, corporations or other organizations or
20 groups;

21 (7) Rendering other services related to the operations of
22 an insurance business, including, but not limited to,
23 actuarial, loss prevention, safety engineering, data pro-
24 cessing, accounting, claims, appraisal and collection
25 services;

26 (8) Ownership and management of assets which the
27 parent corporation could itself own or manage;

28 (9) Acting as administrative agent for a governmental
29 instrumentality which is performing an insurance func-
30 tion;

31 (10) Financing of insurance premiums, agents and other
32 forms of consumer financing;

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

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

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

41 (b) In addition to investments in common stock, pre-
42 ferred stock, debt obligations and other securities permit-
43 ted under any other provision of this chapter, a domestic
44 insurer may also with the commissioner's prior approval:

45 (1) Invest in common stock, preferred stock, debt obliga-
46 tions and other securities of one or more subsidiaries,
47 amounts which do not exceed the lesser of ten percent of
48 such insurer's assets or fifty percent of such insurer's
49 surplus as regards policyholders: *Provided*, That after such
50 investments, the insurer's surplus as regards policyholders
51 will be reasonable in relation to the insurer's outstanding
52 liabilities and adequate to its financial needs. In calculat-
53 ing the amount of such investments, investments in
54 domestic or foreign insurance subsidiaries shall be ex-
55 cluded and there shall be included:

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

62 (B) All amounts expended in acquiring additional
63 common stock, preferred stock, debt obligations and other

64 securities, and all contributions to the capital or surplus,
65 of a subsidiary subsequent to its acquisition or formation;

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

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

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

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

91 (c) Investments in common stock, preferred stock, debt
92 obligations or other securities of subsidiaries made
93 pursuant to subsection (b) of this section shall not be
94 subject to any of the otherwise applicable restrictions or
95 prohibitions contained in this chapter applicable to such
96 investments of insurers except section twenty-one, article
97 eight of this chapter.

98 (d) Whether any investment pursuant to subsection (a) or
99 (b) of this section meets the applicable requirements
100 thereof is to be determined before such investment is made
101 by calculating the applicable investment limitations as
102 though the investment had already been made, taking into
103 account the then outstanding principal balance on all
104 previous investments in debt obligations and the value of
105 all previous investments in equity securities as of the day
106 they were made, net of any return of capital invested, not
107 including dividends.

108 (e) If an insurer ceases to control a subsidiary, it shall
109 dispose of any investment therein made pursuant to this
110 section within three years from the time of the cessation of
111 control or within such further time as the commissioner
112 may prescribe, unless at any time after such investment
113 shall have been made such investment shall have met the
114 requirements for investment under any other provision of
115 this chapter and the insurer has notified the commissioner
116 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.

1 (a) Any person other than the issuer shall not make a
2 tender offer for or a request or invitation for tenders of, or
3 enter into any agreement to exchange securities for, seek
4 to acquire or acquire, in the open market or otherwise, any
5 voting security of a domestic insurer if, after the consum-
6 mation thereof, the person would, directly or indirectly (or
7 by conversion or by exercise of any right to acquire) be in
8 control of the insurer and a person shall not enter into an
9 agreement to merge with or otherwise to acquire control of
10 a domestic insurer or any person controlling a domestic
11 insurer unless at the time any such offer, request or
12 invitation is made or any such agreement is entered into,
13 or prior to the acquisition of such securities if no offer or

14 agreement is involved, the person has filed with the
15 commissioner and has sent to the insurer and, to the extent
16 permitted by applicable federal laws, rules and regula-
17 tions, the insurer has sent to its shareholders a statement
18 containing the information required by this section and
19 the offer, request, invitation, agreement or acquisition has
20 been approved by the commissioner in the manner herein-
21 after prescribed.

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

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

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

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

38 (3) If such person is not an individual, a report of the
39 nature of its business operations during the past five years
40 or for such lesser period as the person and any predeces-
41 sors thereof shall have been in existence; an informative
42 description of the business intended to be done by the
43 person and the person's subsidiaries; and a list of all
44 individuals who are or who have been selected to become
45 directors or executive officers of the person, or who
46 perform or will perform functions appropriate to those
47 positions. The list shall include for each individual the
48 information required by subdivision (2) of this subsection;

49 (4) The source, nature and amount of the consideration
50 used or to be used in effecting the merger or other acquisi-
51 tion of control, a description of any transaction wherein
52 funds were or are to be obtained for any such purpose,
53 including any pledge of the insurer's stock or the stock of
54 any of its subsidiaries or controlling affiliates, and the
55 identity of persons furnishing such consideration: *Pro-*
56 *vided*, That where a source of the consideration is a loan
57 made in the lender's ordinary course of business, the
58 identity of the lender shall remain confidential if the
59 person filing the statement so requests;

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

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

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

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

82 (9) A full description of any contracts, arrangements or
83 understanding with respect to any security referred to in

84 subsection (a) of this section in which any acquiring party
85 is involved, including, but not limited to, transfer of any of
86 the securities, joint ventures, loan or option arrangements,
87 puts or calls, guarantees of loans, guarantees against loss
88 or guarantees of profits, division of losses or profits or the
89 giving or withholding of proxies. The description shall
90 identify the persons with whom such contracts, arrange-
91 ments or understandings have been entered into;

92 (10) A description of the purchase of any security
93 referred to in subsection (a) of this section during the
94 twelve calendar months preceding the filing of the state-
95 ment by any acquiring party, including the dates of
96 purchase, names of the purchasers and consideration paid
97 or agreed to be paid therefor;

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

104 (12) Copies of all tender offers for, requests or invitations
105 for tenders of, exchange offers for and agreements to
106 acquire or exchange any securities referred to in subsec-
107 tion (a) of this section and, if distributed, of additional
108 soliciting material relating thereto;

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

115 (14) Any additional information as the commissioner
116 may by rule prescribe as necessary or appropriate for the
117 protection of policyholders and security holders of the
118 insurer or in the public interest.

119 (d) If the person required to file the statement referred to
120 in subsection (a) of this section is a partnership, limited
121 partnership, syndicate or other group, the commissioner
122 may require that the information called for by subdivi-
123 sions (1) through (14), inclusive, of this subsection shall be
124 given with respect to each partner of the partnership or
125 limited partnership, each member of the syndicate or
126 group and each person who controls the partner or mem-
127 ber. If any partner, member or person is a corporation or
128 the person required to file the statement referred to in
129 subsection (a) of this section is a corporation, the commis-
130 sioner may require that the information called for by
131 subdivisions (1) through (14), inclusive, shall be given with
132 respect to the corporation and each person who is directly
133 or indirectly the beneficial owner of more than ten percent
134 of the outstanding voting securities of the corporation.

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

143 (f) If any offer, request, invitation, agreement or acquisi-
144 tion referred to in subsection (a) of this section is proposed
145 to be made by means of a registration statement under the
146 Securities Act of 1933 or in circumstances requiring the
147 disclosure of similar information under the Securities
148 Exchange Act of 1934 or under a state law requiring
149 similar registration or disclosure, the person required to
150 file the statement referred to in said subsection may utilize
151 such documents in furnishing the information called for by
152 that statement.

153 (g) The commissioner shall approve any merger or other
154 acquisition of control referred to in subsection (a) of this

155 section unless, after a public hearing thereon, he or she
156 finds that any of the following conditions exists:

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

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

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

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

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

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

186 (7) The acquisition is likely to be hazardous or prejudi-
187 cial to the insurance-buying public.

188 (h) The public hearing required by this section shall be
189 held within forty days after the statement required by
190 subsection (a) of this section is filed and at least fifteen
191 days' notice thereof shall be given by the commissioner to
192 the person filing the statement. Not less than seven days'
193 notice of the public hearing shall be given by the person
194 filing the statement to the insurer and to any other persons
195 as may be designated by the commissioner. The insurer
196 shall give notice of the public hearing to its security
197 holders. The commissioner shall make a determination
198 within twenty days after the conclusion of the hearing.

199 (i) The commissioner may retain at the acquiring per-
200 son's expense any attorneys, actuaries, accountants and
201 other experts not otherwise a part of the commissioner's
202 staff as may be reasonably necessary to assist the commis-
203 sioner in reviewing the proposed acquisition of control.

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

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

223 (l) The following are violations of this section:

224 (1) The failure to file any statement, amendment or other
225 material required to be filed pursuant to subsection (a) or
226 (b) of this section; or

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

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

§33-27-7. Confidential treatment.

1 All information, documents and copies thereof obtained
2 by or disclosed to the commissioner or any other person in
3 the course of an examination or investigation made
4 pursuant to section six of this article and all information
5 reported pursuant to sections four and five of this article
6 shall be given confidential treatment and are not subject
7 to subpoena and may not be made public by the commis-
8 sioner or any other person, except to insurance depart-
9 ments of other states and to the board of governors of the
10 federal reserve system or other appropriate federal bank-
11 ing agency in accordance with section nineteen, article two
12 of this chapter, without the prior written consent of the
13 insurer to which it pertains unless the commissioner, after
14 giving the insurer and its affiliates who would be affected

15 thereby notice and opportunity to be heard, determines
16 that the interests of policyholders, shareholders or the
17 public will be served by the publication thereof, in which
18 event he or she may publish all or any part thereof in any
19 manner as he or she may consider appropriate.

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

Cary Mc
.....
Chairman Senate Committee

Greg Butcher
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David Glavin
.....
Clerk of the Senate

Bryce D. Boy
.....
Clerk of the House of Delegates

Carl Ray Tompkins
.....
President of the Senate

Robert B. Biss
.....
Speaker House of Delegates

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

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3.19.03

Time 4.30 pm BW