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**WEST VIRGINIA LEGISLATURE**

Regular Session, 2003

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**ENROLLED**

Committee Substitute for

**SENATE BILL NO.** 534

(By Senator Minard, et al )

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**PASSED** March 8, 2003

**In Effect** 90 days from **Passage**

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SENATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### **Senate Bill No. 534**

(SENATORS MINARD, JENKINS, SHARPE,  
MINEAR AND ROSS, *original sponsors*)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article forty-six, relating to third-party administrators; requiring licensing of third-party administrators; requiring all third-party administrators to obtain certificates of authority; defining terms; disposition of premiums and claim payments received by the administrator; requiring administrator to maintain certain information; requiring advertising be approved; setting forth responsibilities of the insurer; providing for the collection of premiums and payment of claims; administrator compensation; notices and disclosures; nonresident and home state certificate of authority; denial, suspension or revocation of

certificate of authority; authority to propose rules; requiring third-party administrators to have written contracts with their insurers; and requiring third-party administrators to provide the commission with certain disclosures.

*Be it enacted by the Legislature of West Virginia:*

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article forty-six, to read as follows:

**ARTICLE 46. THIRD-PARTY ADMINISTRATOR ACT.**

**§33-46-1. Short title.**

1 This article may be cited as the “Third-Party Adminis-  
2 trator Act”.

**§33-46-2. Definitions.**

1 (a) “Administrator” or “third-party administrator”  
2 means a person who directly or indirectly underwrites or  
3 collects charges or premiums from, or adjusts or settles  
4 claims on residents of this state, in connection with life,  
5 annuity or accident and sickness coverage offered or  
6 provided by an insurer, except any of the following:

7 (1) An employer, or a wholly owned direct or indirect  
8 subsidiary of an employer, on behalf of its employees or  
9 the employees of one or more subsidiaries or affiliated  
10 corporations of the employer;

11 (2) A union on behalf of its members;

12 (3) An insurer that is licensed to transact insurance in  
13 this state with respect to a policy lawfully issued and  
14 delivered in and pursuant to the laws of this state or  
15 another state including:

16 (A) A health service corporation licensed under article  
17 twenty-four of this chapter;

18 (B) A health care corporation licensed under article  
19 twenty-five of this chapter;

20 (C) A health maintenance organization licensed under  
21 article twenty-five-a of this chapter; and

22 (D) A prepaid limited health service organization  
23 licensed under article twenty-five-d of this chapter.

24 (4) An insurance producer licensed to sell life, annuities  
25 or health coverage in this state whose activities are limited  
26 exclusively to the sale of insurance;

27 (5) A creditor on behalf of its debtors with respect to  
28 insurance covering a debt between the creditor and its  
29 debtors;

30 (6) A trust and its trustees, agents and employees acting  
31 pursuant to the trust established in conformity with 29 U.  
32 S. C. Section 186;

33 (7) A trust exempt from taxation under Section 501(a) of  
34 the Internal Revenue Code, its trustees and employees  
35 acting pursuant to the trust, or a custodian and the custo-  
36 dian's agents or employees acting pursuant to a custodian  
37 account which meets the requirements of Section 401(f) of  
38 the Internal Revenue Code;

39 (8) A credit union or a financial institution that is  
40 subject to supervision or examination by federal or state  
41 banking authorities, or a mortgage lender, to the extent  
42 they collect and remit premiums to licensed insurance  
43 producers or to limited lines producers or authorized  
44 insurers in connection with loan payments;

45 (9) A credit card issuing company that advances for and  
46 collects insurance premiums or charges from its credit  
47 card holders who have authorized collection;

48 (10) A person who adjusts or settles claims in the normal  
49 course of that person's practice or employment as an  
50 attorney at law and who does not collect charges or

51 premiums in connection with life, annuity or accident and  
52 sickness coverage;

53 (11) An adjuster licensed by this state whose activities  
54 are limited to adjustment of claims;

55 (12) A person licensed as a managing general agent in  
56 this state whose activities are limited exclusively to the  
57 scope of activities conveyed under that license; or

58 (13) An administrator who is affiliated with an insurer  
59 and who only performs the contractual duties, between the  
60 administrator and the insurer, of an administrator for the  
61 direct and assumed business of the affiliated insurer. The  
62 insurer is responsible for the acts of the administrator and  
63 is responsible for providing all of the administrator's  
64 books and records to the insurance commissioner, upon a  
65 request from the insurance commissioner. For purposes of  
66 this subdivision, "insurer" means a licensed insurance  
67 company, prepaid hospital or medical care plan, health  
68 maintenance organization or a health care corporation.

69 (b) "Affiliate or affiliated" means an entity or person  
70 who directly or indirectly through one or more intermedi-  
71 aries, controls or is controlled by, or is under common  
72 control with, a specified entity or person.

73 (c) "Commissioner" means the insurance commissioner  
74 of this state.

75 (d) "Control", "controlling", "controlled by" and "under  
76 common control with" mean the possession, direct or  
77 indirect, of the power to direct or cause the direction of the  
78 management and policies of a person, whether through the  
79 ownership of voting securities, by contract other than a  
80 commercial contract for goods or nonmanagement ser-  
81 vices, or otherwise, unless the power is the result of an  
82 official position with or corporate office held by the  
83 person. Control shall be presumed to exist if any person,  
84 directly or indirectly, owns, controls, holds with the power  
85 to vote or holds proxies representing ten percent or more

86 of the voting securities of any other person. This presump-  
87 tion may be rebutted by a showing made in the manner  
88 provided by the West Virginia insurance holding company  
89 systems act that control does not exist in fact. The com-  
90 missioner may determine, after furnishing all persons in  
91 interest notice and opportunity to be heard and making  
92 specific findings of fact to support the determination that  
93 control exists in fact, notwithstanding the absence of a  
94 presumption to that effect.

95 (e) “GAAP” means United States generally accepted  
96 accounting principles consistently applied.

97 (f) “Home state” means the District of Columbia and any  
98 state or territory of the United States in which an adminis-  
99 trator is incorporated or maintains its principal place of  
100 business. If neither the state in which the administrator is  
101 incorporated, nor the state in which it maintains its  
102 principal place of business has adopted the national  
103 association of insurance commissioners’ model third-party  
104 administrator act or a substantially similar law governing  
105 administrators, the administrator may declare another  
106 state, in which it conducts business, to be its “home state.”

107 (g) “Insurance producer” means a person who sells,  
108 solicits or negotiates a contract of insurance as those terms  
109 are defined in this article.

110 (h) “Insurer” means a person undertaking to provide life,  
111 annuity or accident and sickness coverage or self-funded  
112 coverage under a governmental plan or church plan in this  
113 state. For the purposes of this article, insurer includes an  
114 employer, a licensed insurance company, a prepaid  
115 hospital or medical care plan, health maintenance organi-  
116 zation or a health care corporation.

117 (i) “Negotiate” means the act of conferring directly with  
118 or offering advice directly to a purchaser or prospective  
119 purchaser of a particular contract of insurance concerning  
120 any of the substantive benefits, terms or conditions of the

121 contract, provided that the person engaged in that act  
122 either sells insurance or obtains insurance from insurers  
123 for purchasers.

124 (j) "Nonresident administrator" means a person who is  
125 applying for licensure or is licensed in any state other than  
126 the administrator's home state.

127 (k) "Person" means an individual or a business entity.

128 (l) "Sell" means to exchange a contract of insurance by  
129 any means, for money or its equivalent, on behalf of an  
130 insurance company.

131 (m) "Solicit" means attempting to sell insurance or  
132 asking or urging a person to apply for a particular kind of  
133 insurance from a particular company.

134 (n) "Underwrites" or "underwriting" means, but is not  
135 limited to, the acceptance of employer or individual  
136 applications for coverage of individuals in accordance  
137 with the written rules of the insurer or self-funded plan;  
138 and the overall planning and coordinating of a benefits  
139 program.

140 (o) "Uniform application" means the current version of  
141 the national association of insurance commissioners  
142 uniform application for third-party administrators.

**§33-46-3. Written agreement necessary.**

1 (a) No administrator may act as such without a written  
2 agreement between the administrator and the insurer and  
3 the written agreement shall be retained as part of the  
4 official records of both the insurer and the administrator  
5 for the duration of the agreement and for ten years  
6 thereafter. The agreement shall contain all provisions  
7 required by this statute, except insofar as those require-  
8 ments do not apply to the functions performed by the  
9 administrator.

10 (b) The written agreement shall include a statement of  
11 duties that the administrator is expected to perform on

12 behalf of the insurer and the lines, classes or types of  
13 insurance which the administrator is to be authorized to  
14 administer. The agreement shall make provision with  
15 respect to underwriting or other standards pertaining to  
16 the business underwritten by the insurer.

17 (c) The insurer or administrator may, with written  
18 notice, terminate the written agreement for cause as  
19 provided in the agreement. The insurer may suspend the  
20 underwriting authority of the administrator during the  
21 pendency of any dispute regarding the cause for termina-  
22 tion of the written agreement. The insurer shall fulfill any  
23 lawful obligations with respect to policies affected by the  
24 written agreement, regardless of any dispute between the  
25 insurer and the administrator.

**§33-46-4. Payment to administrator.**

1 If an insurer uses the services of an administrator, the  
2 payment to the administrator of any premiums or charges  
3 for insurance by or on behalf of the insured party shall be  
4 considered to have been received by the insurer and the  
5 payment of return premiums or claim payments forwarded  
6 by the insurer to the administrator shall not be considered  
7 to have been paid to the insured party or claimant until  
8 the payments are received by the insured party or claim-  
9 ant. Nothing in this section limits any right of the insurer  
10 against the administrator resulting from the failure of the  
11 administrator to make payments to the insurer, insured  
12 parties or claimants.

**§33-46-5. Maintenance of information.**

1 (a) An administrator shall maintain and make available  
2 to the insurer complete books and records of all transac-  
3 tions performed on behalf of the insurer. The books and  
4 records shall be maintained in accordance with prudent  
5 standards of insurance recordkeeping and shall be main-  
6 tained for a period of not less than ten years from the date  
7 of their creation.

8 (b) The commissioner shall have access to books and  
9 records maintained by an administrator for the purposes  
10 of examination, audit and inspection. Any documents,  
11 materials or other information in the possession or control  
12 of the commissioner that is furnished by an administrator,  
13 insurer, insurance producer or an employee or agent  
14 thereof acting on behalf of the administrator, insurer or  
15 insurance producer, or obtained by the commissioner in an  
16 investigation is confidential by law and privileged, is not  
17 subject to chapter twenty-nine-b of this code, is not  
18 subject to subpoena and is not subject to discovery or  
19 admissible as evidence in any private civil action. How-  
20 ever, the commissioner may use the documents, materials  
21 or other information in the furtherance of any regulatory  
22 or legal action brought as a part of the commissioner's  
23 official duties.

24 (c) Neither the commissioner nor any person who  
25 received documents, materials or other information while  
26 acting under the authority of the commissioner shall be  
27 permitted or required to testify in any private civil action  
28 concerning any confidential documents, materials or  
29 information subject to subsection (b) of this section.

30 (d) In order to assist in the performance of his or her  
31 duties, the commissioner may:

32 (1) Share documents, materials or other information,  
33 including the confidential and privileged documents,  
34 materials or information subject to subsection (b) of this  
35 section, with other state, federal and international regula-  
36 tory agencies, with the national association of insurance  
37 commissioners, its affiliates or subsidiaries and with state,  
38 federal and international law-enforcement authorities,  
39 provided that the recipient agrees to maintain the confi-  
40 dentiality and privileged status of the document, material  
41 or other information;

42 (2) Receive documents, materials or information, includ-  
43 ing otherwise confidential and privileged documents,

44 materials or information, from the national association of  
45 insurance commissioners, its affiliates or subsidiaries and  
46 from regulatory and law-enforcement officials of other  
47 foreign or domestic jurisdictions and shall maintain as  
48 confidential or privileged any document, material or  
49 information received with notice or the understanding that  
50 it is confidential or privileged under the laws of the  
51 jurisdiction that is the source of the document, material or  
52 information; and

53 (3) Enter into agreements governing the sharing and use  
54 of information consistent with this subsection.

55 (e) No waiver of any applicable privilege or claim of  
56 confidentiality in the documents, materials or information  
57 shall occur as a result of disclosure to the commissioner  
58 under this section or as a result of sharing as authorized in  
59 subsection (d) of this section.

60 (f) Nothing in this article prohibits the commissioner  
61 from releasing final, adjudicated actions, including for  
62 cause terminations, that are open to public inspection  
63 pursuant to chapter twenty-nine-b of this code to a  
64 database or other clearinghouse service maintained by the  
65 national association of insurance commissioners, its  
66 affiliates or subsidiaries.

67 (g) The insurer owns the records generated by the  
68 administrator pertaining to the insurer; however, the  
69 administrator shall retain the right to continuing access to  
70 books and records to permit the administrator to fulfill all  
71 of its contractual obligations to insured parties, claimants  
72 and the insurer.

73 (h) In the event the insurer and the administrator cancel  
74 their agreement; the administrator may, by written  
75 agreement with the insurer, transfer all records to a new  
76 administrator rather than retain them for ten years not  
77 withstanding the provisions of subsection (a) of this  
78 section. In those cases, the new administrator shall

79 acknowledge, in writing, that it is responsible for retaining  
80 the records of the prior administrator as required in  
81 subsection (a) of this section.

**§33-46-6. Approval of advertising.**

1 An administrator may use only advertising pertaining to  
2 the business underwritten by an insurer that has been  
3 approved in writing by the insurer in advance of its use.

**§33-46-7. Responsibilities of the insurer.**

1 (a) If an insurer uses the services of an administrator, the  
2 insurer is responsible for determining the benefits, pre-  
3 mium rates, underwriting criteria and claims payment  
4 procedures applicable to the coverage and for securing  
5 reinsurance, if any. The rules pertaining to these matters  
6 shall be provided, in writing, by the insurer to the admin-  
7 istrator. The responsibilities of the administrator as to any  
8 of these matters shall be set forth in the written agreement  
9 between the administrator and the insurer.

10 (b) It is the sole responsibility of the insurer to provide  
11 for competent administration of its programs.

12 (c) In cases where an administrator administers benefits  
13 for more than one hundred certificate holders on behalf of  
14 an insurer, the insurer shall, at least semiannually, conduct  
15 a review of the operations of the administrator. At least  
16 one review shall be an on-site audit of the operations of  
17 the administrator.

18 (d) For purposes of this section, "insurer" means a  
19 licensed insurance company, prepaid hospital or medical  
20 care plan, health maintenance organization or a health  
21 care corporation.

**§33-46-8. Premium collection and payment of claims.**

1 (a) All insurance charges or premiums collected by an  
2 administrator on behalf of or for an insurer, and the return  
3 of premiums received from that insurer, shall be held by

4 the administrator in a fiduciary capacity. The funds shall  
5 be immediately remitted to the person entitled to them or  
6 shall be deposited promptly in a fiduciary account estab-  
7 lished and maintained by the administrator in a federally  
8 or state-insured financial institution. The written agree-  
9 ment between the administrator and the insurer shall  
10 provide for the administrator to periodically render an  
11 accounting to the insurer detailing all transactions per-  
12 formed by the administrator pertaining to the business  
13 underwritten by the insurer.

14 (b) If charges or premiums deposited in a fiduciary  
15 account have been collected on behalf of or for one or more  
16 insurers, the administrator shall keep records clearly  
17 recording the deposits in and withdrawals from the  
18 account on behalf of each insurer. The administrator shall  
19 keep copies of all the records and, upon request of an  
20 insurer, shall furnish the insurer with copies of the records  
21 pertaining to the deposits and withdrawals.

22 (c) The administrator shall not pay any claim by with-  
23 draws from a fiduciary account in which premiums or  
24 charges are deposited. Withdrawals from the account  
25 shall be made as provided in the written agreement  
26 between the administrator and the insurer. The written  
27 agreement shall address, but not be limited to, the follow-  
28 ing:

29 (1) Remittance to an insurer entitled to remittance;

30 (2) Deposit in an account maintained in the name of the  
31 insurer;

32 (3) Transfer to and deposit in a claims-paying account,  
33 with claims to be paid as provided for in subsection (d) of  
34 this section;

35 (4) Payment to a group policyholder for remittance to the  
36 insurer entitled to the remittance;

37 (5) Payment to the administrator of its commissions, fees  
38 or charges; and

39 (6) Remittance of return premium to the person or  
40 persons entitled to the return premium.

41 (d) All claims paid by the administrator from funds  
42 collected on behalf of or for an insurer shall be paid only  
43 on drafts or checks of and as authorized by the insurer.

**§33-46-9. Compensation to the administrator.**

1 (a) An administrator may not enter into an agreement or  
2 understanding with an insurer in which the effect is to  
3 make the amount of the administrator's commissions, fees  
4 or charges contingent upon savings effected in the adjust-  
5 ment, settlement and payment of losses covered by the  
6 insurer's obligations. This provision shall not prohibit an  
7 administrator from receiving performance-based compen-  
8 sation for providing hospital or other auditing services.

9 (b) This section shall not prevent the compensation of an  
10 administrator from being based on premiums or charges  
11 collected or the number of claims paid or processed.

**§33-46-10. Notice to covered individuals; disclosure of charges and fees.**

1 (a) When the services of an administrator are used, the  
2 administrator shall provide a written notice approved by  
3 the insurer to covered individuals advising them of the  
4 identity of, and relationship among, the administrator, the  
5 policyholder and the insurer.

6 (b) When an administrator collects funds, the reason for  
7 collection of each item shall be identified to the insured  
8 party and each item shall be shown separately from any  
9 premium. Additional charges may not be made for  
10 services to the extent the services have been paid for by  
11 the insurer.

12 (c) The administrator shall disclose to the insurer all  
13 charges, fees and commissions received from all services in  
14 connection with the provision of administrative services

15 for the insurer, including any fees or commissions paid by  
16 insurers providing reinsurance.

**§33-46-11. Delivery of materials to covered individuals.**

1 Any policies, certificates, booklets, termination notices  
2 or other written communications delivered by the insurer  
3 to the administrator for delivery to insured parties or  
4 covered individuals shall be delivered by the administrator  
5 promptly after receipt of instructions from the insurer to  
6 deliver them.

**§33-46-12. Home state certificate of authority or license.**

1 (a) Prior to conducting business in West Virginia an  
2 administrator or third-party administrator must be  
3 licensed in accordance with the requirements of this  
4 article.

5 (b) If West Virginia is a person's home state, then the  
6 person may apply for licensure in this state by filing a  
7 uniform application with the insurance commissioner. The  
8 application shall include or be accompanied by the  
9 following information and documents:

10 (1) All basic organizational documents of the applicant,  
11 including any articles of incorporation, articles of associa-  
12 tion, partnership agreement, trade name certificate, trust  
13 agreement, shareholder agreement and other applicable  
14 documents and all amendments to the documents;

15 (2) The bylaws, rules, regulations or similar documents  
16 regulating the internal affairs of the applicant;

17 (3) National association of insurance commissioners'  
18 biographical affidavits for the individuals who are respon-  
19 sible for the conduct of affairs of the applicant, including  
20 all members of the board of directors, board of trustees,  
21 executive committee or other governing board or commit-  
22 tee; the principal officers in the case of a corporation or  
23 the partners or members in the case of a partnership,  
24 association or limited liability company; any shareholders

25 or member holding directly or indirectly ten percent or  
26 more of the voting stock, voting securities or voting  
27 interest of the applicant; and any other person who  
28 exercises control or influence over the affairs of the  
29 applicant;

30 (4) Audited annual financial statements or reports for  
31 the two most recent fiscal years that prove that the  
32 applicant has a positive net worth. If the applicant has  
33 been in existence for less than two fiscal years, the appli-  
34 cation shall include financial statements or reports,  
35 certified by an officer of the applicant and prepared in  
36 accordance with GAAP, for any completed fiscal years and  
37 for any month during the current fiscal year for which the  
38 financial statements or reports have been completed. An  
39 audited financial/annual report prepared on a consoli-  
40 dated basis shall include a columnar consolidating or  
41 combining worksheet that shall be filed with the report  
42 and include the following:

43 (A) Amounts shown on the consolidated audited finan-  
44 cial report;

45 (B) Amounts for each entity stated separately; and

46 (C) Explanations of consolidating and eliminating  
47 entries.

48 The applicant shall also include any other information  
49 required by the commissioner in order to review the  
50 current financial condition of the applicant;

51 (5) A statement describing the business plan including  
52 information on staffing levels and activities proposed in  
53 this state and nationwide. The plan shall provide details  
54 setting forth the applicant's capability for providing a  
55 sufficient number of experienced and qualified personnel  
56 in the areas of claims processing, recordkeeping and  
57 underwriting; and

58 (6) Any other pertinent information required by the  
59 commissioner.

60 (c) An administrator licensed or applying for licensure  
61 under this section shall make available for inspection by  
62 the commissioner copies of all contracts with insurers or  
63 other persons using the services of the administrator.

64 (d) An administrator licensed or applying for licensure  
65 under this section shall produce its accounts, records and  
66 files for examination and make its officers available to  
67 give information with respect to its affairs as often as  
68 reasonably required by the commissioner.

69 (e) The commissioner may refuse to issue a certificate of  
70 authority or license if the commissioner determines that  
71 the administrator, or any individual responsible for the  
72 conduct of affairs of the administrator, is not competent,  
73 trustworthy, financially responsible or of good personal  
74 and business reputation or has had an insurance or an  
75 administrator certificate of authority or license denied or  
76 revoked for cause by any jurisdiction, or if the commis-  
77 sioner determines that any of the grounds set forth in  
78 section seventeen of this article exists with respect to the  
79 administrator.

80 (f) A certificate of authority or license issued under this  
81 section shall remain valid, unless surrendered, suspended  
82 or revoked by the commissioner, for as long as the admin-  
83 istrator continues in business in this state and remains in  
84 compliance with this article.

85 (g) An administrator licensed or applying for licensure  
86 under this section shall immediately notify the commis-  
87 sioner of any material change in its ownership, control or  
88 other fact or circumstance affecting its qualification for a  
89 certificate of authority or license in this state.

90 (h) An administrator licensed or applying for a home  
91 state certificate of authority/license that administers or  
92 will administer governmental or church self-insured plans  
93 in its home state or any other state shall maintain a surety  
94 bond for the use and benefit of the home state commis-

95 sioner and the insurance regulatory authority of any  
96 additional state in which the administrator is authorized  
97 to conduct business and cover individuals and persons who  
98 have remitted premiums or insurance charges or other  
99 moneys to the administrator in the course of the adminis-  
100 trator's business in the lessor of the following amounts:

101 (1) One hundred thousand dollars; or

102 (2) Ten percent of the aggregate total amount of self-  
103 funded coverage under church plans or governmental  
104 plans handled in the administrator's home state and all  
105 additional states in which the administrator is authorized  
106 to conduct business.

**§33-46-13. Registration requirement.**

1 A person who directly or indirectly underwrites, collects  
2 charges or premiums from, or adjusts or settles claims on  
3 residents of this state, in connection with life, annuity or  
4 accident and sickness coverage provided by a self-funded  
5 plan other than a governmental or church plan shall  
6 register with the commissioner annually, verifying its  
7 status as in this article described.

**§33-46-14. Nonresident administrator**

1 (a) Unless an administrator has obtained a home state  
2 license in this state under section twelve of this article, any  
3 administrator who performs administrator duties in this  
4 state shall obtain a nonresident administrator license in  
5 accordance with this section by filing with the commis-  
6 sioner the uniform application, accompanied by a letter of  
7 certification. In lieu of requiring an administrator to file  
8 a letter of certification with the uniform application, the  
9 commissioner may verify the nonresident administrator's  
10 home state certificate of authority or license status  
11 through an electronic database maintained by the national  
12 association of insurance commissioners, its affiliates or  
13 subsidiaries.

14 (b) An administrator is not eligible for a nonresident  
15 administrator license under this section if it does not hold  
16 a certificate of authority or license as a resident in a home  
17 state that has adopted the national association of insur-  
18 ance commissioners' model third-party administrator act  
19 or a substantially similar law governing administrators.

20 (c) Except as provided in subsections (b) and (h) of this  
21 section, the commissioner shall issue to the administrator  
22 a nonresident administrator license promptly upon receipt  
23 of a complete application and the application fee.

24 (d) Unless notified by the commissioner that the commis-  
25 sioner is able to verify the nonresident administrator's  
26 home state certificate of authority or license status  
27 through an electronic database maintained by the national  
28 association of insurance commissioners, its affiliates or  
29 subsidiaries, each nonresident administrator shall annu-  
30 ally file a statement that its home state administrator  
31 certificate of authority or license remains in force and has  
32 not been revoked or suspended by its home state during  
33 the preceding year.

34 (e) At the time of filing the statement required under  
35 subsection (d) of this section or, if the commissioner has  
36 notified the nonresident administrator that the commis-  
37 sioner is able to verify the nonresident administrator's  
38 home state certificate of authority or license status  
39 through an electronic database, on or before the first day  
40 of October, the nonresident administrator shall pay the fee  
41 set forth in section fifteen of this article.

42 (f) An administrator licensed or applying for licensure  
43 under this section shall produce its accounts, records and  
44 files for examination and make its officers available to  
45 give information with respect to its affairs as often as  
46 reasonably required by the commissioner.

47 (g) A nonresident administrator is not required to hold  
48 a nonresident administrator license in this state if the

49 administrator's duties in this state are limited to the  
50 administration of a group policy or plan of insurance and  
51 no more than a total of one hundred lives for all plans  
52 reside in this state. This subsection applies only to  
53 multistate administrators. The administrator must be  
54 licensed in its home state regardless of the number of lives  
55 under a group policy or plan.

56 (h) The commissioner may refuse to issue a nonresident  
57 administrator license, or may delay the issuance of a  
58 nonresident administrator license, if the commissioner  
59 determines that, due to events or information obtained  
60 subsequent to the home state's licensure of the administra-  
61 tor, the nonresident administrator cannot satisfy the  
62 requirements of this article or that grounds exist for the  
63 home state's revocation or suspension of the administra-  
64 tor's home state certificate of authority or license. In that  
65 event, the commissioner shall give written notice of its  
66 determination to the commissioner of the home state and  
67 the commissioner may delay the issuance of a nonresident  
68 administrator license to the nonresident administrator  
69 until such time, if at all, that the commissioner determines  
70 that the administrator can satisfy the requirements of this  
71 article and that no grounds exist for the home state's  
72 revocation or suspension of the administrator's home state  
73 certificate of authority or license.

**§33-46-15. Fees and charges.**

1 Except where it is otherwise specially provided, the  
2 commissioner shall assess third-party administrators the  
3 following fees: For annual fee for each license, two  
4 hundred dollars; for receiving and filing annual reports,  
5 one hundred dollars; for filing a certified copy of articles  
6 of incorporation, fifty dollars; for filing a copy of its  
7 charter, fifty dollars; for filing statements preliminary to  
8 admission, one hundred dollars; for filing any additional  
9 paper required by law or furnishing copies of the addi-  
10 tional paper, one dollar; and for every copy of a report or  
11 certificate of condition of administrator to be filed in any

12 other state, twenty-five dollars. The commissioner may by  
13 rule set reasonable charges for printed forms for the  
14 annual statements required by law. He or she may sell at  
15 cost publications purchased by, or printed on behalf of the  
16 commissioner. All fees and moneys collected shall be used  
17 for the purposes set forth in section thirteen, article three  
18 of this chapter.

**§33-46-16. Annual report and filing fee.**

1 (a) Each administrator licensed under section twelve of  
2 this article shall file an annual report for the preceding  
3 calendar year with the commissioner on or before the first  
4 day of July of each year or within an extension of time  
5 granted by the commissioner for good cause. The annual  
6 report shall include an audited financial statement per-  
7 formed by an independent certified public accountant. An  
8 audited financial/annual report prepared on a consoli-  
9 dated basis shall include a columnar consolidating or  
10 combining worksheet that shall be filed with the report  
11 and include the following:

12 (1) Amounts shown on the consolidated audited financial  
13 report;

14 (2) Amounts for each entity stated separately; and

15 (3) Explanations of consolidating and eliminating  
16 entries.

17 The report shall be in the form and contain any matters  
18 prescribed by the commissioner and shall be verified by at  
19 least two officers of the administrator.

20 (b) The annual report shall include the complete names  
21 and addresses of all insurers with which the administrator  
22 had agreements during the preceding fiscal year.

23 (c) At the time of filing its annual report, the administra-  
24 tor shall pay the filing fee provided in section fifteen of  
25 this article.

26 (d) The commissioner shall review the most recently filed  
27 annual report of each administrator on or before the first  
28 day of September of each year. Upon completion of its  
29 review, the commissioner shall either:

30 (1) Issue a certification to the administrator that the  
31 annual report shows that the administrator has a positive  
32 net worth as evidenced by audited financial statements  
33 and is currently licensed and in good standing, or noting  
34 any deficiencies found in that annual report and financial  
35 statements; or

36 (2) Update any electronic database maintained by the  
37 national association of insurance commissioners, its  
38 affiliates or subsidiaries, indicating the annual report  
39 shows that the administrator has a positive net worth as  
40 evidenced by audited financial statements and is in  
41 compliance with existing law, or noting any deficiencies  
42 found in the annual report.

**§33-46-17. Grounds for denial, suspension or revocation of  
license.**

1 (a) The license of an administrator shall be denied,  
2 suspended or revoked if the commissioner finds that the  
3 administrator:

4 (1) Is in an unsound financial condition;

5 (2) Is using methods or practices in the conduct of its  
6 business that render its further transaction of business in  
7 this state hazardous or injurious to insured persons or the  
8 public; or

9 (3) Has failed to pay any judgment rendered against it in  
10 this state within sixty days after the judgment has become  
11 final.

12 (b) The commissioner may deny, suspend or revoke the  
13 license of an administrator if the commissioner finds that  
14 the administrator:

15 (1) Has violated any lawful rule or order of the commis-  
16 sioner or any provision of the insurance laws of this state;

17 (2) Has refused to be examined or to produce its ac-  
18 counts, records and files for examination, or if any indi-  
19 vidual responsible for the conduct of affairs of the admin-  
20 istrator, including members of the board of directors,  
21 board of trustees, executive committee or other governing  
22 board or committee; the principal officers in the case of a  
23 corporation or the partners or members in the case of a  
24 partnership, association or limited liability company; any  
25 shareholder or member holding directly or indirectly ten  
26 percent or more of the voting stock, voting securities or  
27 voting interest of the administrator; and any other person  
28 who exercises control or influence over the affairs of the  
29 administrator; has refused to give information with respect  
30 to its affairs; or has refused to perform any other legal  
31 obligation as to an examination, when required by the  
32 commissioner;

33 (3) Has, without just cause, refused to pay proper claims  
34 or perform services arising under its contracts or has,  
35 without just cause, caused covered individuals to accept  
36 less than the amount due them or caused covered individu-  
37 als to employ attorneys or bring suit against the adminis-  
38 trator to secure full payment or settlement of their claims;

39 (4) At any time fails to meet any qualification for which  
40 issuance of the license could have been refused had the  
41 failure then existed and been known to the commissioner;

42 (5) Or any of the individuals responsible for the conduct  
43 of its affairs, including members of the board of directors,  
44 board of trustees, executive committee or other governing  
45 board or committee; the principal officers in the case of a  
46 corporation or the partners or members in the case of a  
47 partnership, association or limited liability company; any  
48 shareholder or member holding directly or indirectly ten  
49 percent or more of its voting stock, voting securities or  
50 voting interest; and any other person who exercises control

51 or influence over its affairs has been convicted of, or has  
52 entered a plea of guilty or nolo contendere to, a felony  
53 without regard to whether the adjudication was withheld;

54 (6) Is under suspension or revocation in another state; or

55 (7) Has failed to timely file its annual report pursuant to  
56 section sixteen of this article, if a resident administrator,  
57 or its statement and filing fee, as applicable, pursuant to  
58 subsections (d) and (e), section fourteen of this article if a  
59 nonresident administrator.

60 (c) The commissioner may, in his or her discretion and  
61 without advance notice or hearing, immediately suspend  
62 the license of an administrator if the commissioner finds  
63 that one or more of the following circumstances exist:

64 (1) The administrator is insolvent or impaired;

65 (2) A proceeding for receivership, conservatorship,  
66 rehabilitation or other delinquency proceeding regarding  
67 the administrator has been commenced in any state; or

68 (3) The financial condition or business practices of the  
69 administrator otherwise pose an imminent threat to the  
70 public health, safety or welfare of the residents of this  
71 state.

72 (d) If the commissioner finds that one or more grounds  
73 exist for the suspension or revocation of a license issued  
74 under this article, in any case except where that action is  
75 not mandatory, the commissioner may, in lieu of suspen-  
76 sion or revocation, by order require the administrator to  
77 pay to the state of West Virginia a penalty in a sum not  
78 exceeding ten thousand dollars and upon the failure of the  
79 administrator to pay the penalty within thirty days after  
80 notice of the penalty, the commissioner may revoke or  
81 suspend the license of the administrator.

82 (e) When any license has been revoked or suspended or  
83 renewal of the license refused, the commissioner may  
84 reissue, terminate the suspension or renew the license

85 when he or she is satisfied that the conditions causing the  
86 revocation, suspension or refusal to renew have ceased to  
87 exist and are unlikely to recur.

**§33-46-18. Exemption for administrators of public health programs.**

1 Programs supervised by the department of health and  
2 human resources, pursuant to chapter nine of this code; the  
3 public employees insurance agency, pursuant to articles  
4 sixteen and sixteen-c, chapter five of this code; and the  
5 department of administration, pursuant to article sixteen-  
6 b, chapter five of this code, are exempted from the provi-  
7 sions of this article. Third-party administrators who  
8 administer the above-referenced programs are exempt  
9 from the provisions of this article with respect to these  
10 specific programs only.

**§33-46-19. Unauthorized business.**

1 The unauthorized conduct of the business of an adminis-  
2 trator shall be treated as unauthorized insurance business  
3 and shall be subject to the same criminal and civil penal-  
4 ties as provided in article forty-four for violation of the  
5 unauthorized insurers act.

**§33-46-20. Commissioner authorized to propose rules.**

1 The insurance commissioner may propose rules for  
2 legislative approval in accordance with the provisions of  
3 article three, chapter twenty-nine-a of this code that are  
4 necessary to effectuate this article.

Enr. Com. Sub. For S. B. No. 534] 24

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

*Cary Ann*  
.....  
Chairman Senate Committee

*Shaw Spaul*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell Edwards*  
.....  
Clerk of the Senate

*Bryce M. Sax*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*Arthur E. Skoss*  
.....  
Speaker House of Delegates

The within *is approved* this the *15<sup>th</sup>*

Day of *April*, 2003.

*Bob Wise*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/27/03

Time 10:10am