

RECEIVED

03 APR ~2 PM 12:57

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

Committee Substitute for

SENATE BILL NO. 534

(By Senator Minard, et al)

PASSED March 8, 2003

In Effect 90 days from **Passage**

RECEIVED

03 APR 2 11:12:57

OFFICE OF THE CLERK
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

Carl Roy Tomblin
.....
President of the Senate

Arthur Skoss
.....
Speaker House of Delegates

The within *is approved* this the *15th*

Day of *April*, 2003.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10am