ENROLLED

SENATE BILL NO. 254

(By Senator Minard, et al.)

PASSED April 9, 2005

In Effect 90 days from Passage
AN ACT to amend and reenact §33-38-2, §33-38-3 and §33-38-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §33-38-3a and §33-38-14, all relating to reinsurance intermediaries; defining terms; establishing licensing requirements and procedures; setting fees; providing for service of process; and providing for reciprocity in certain instances.

Be it enacted by the Legislature of West Virginia:

That §33-38-2, §33-38-3 and §33-38-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §33-38-3a and §33-38-14, all to read as follows:

ARTICLE 38. REINSURANCE INTERMEDIARY ACT.


1 The definitions set forth in section two, article twelve of this chapter apply to this article. In addition, as used in this article:
(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(b) "Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.

(c) "Commissioner" means the Insurance Commissioner of West Virginia.

(d) "Insurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of this chapter as an insurer.

(e) "Firm" means an individual doing business as a sole proprietor, a partnership, limited liability company, limited liability partnership or other legal entity.

(f) "Licensed producer" means an insurance producer or reinsurance intermediary licensed pursuant to the applicable provisions of this chapter.

(g) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subdivisions (g) and (h) of this section.

(h) "Reinsurance intermediary-broker" means any person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.

(i) "Reinsurance intermediary-manager" means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such reinsurer, whether known as a reinsurance intermediary-manager, manager or other
similar term. Notwithstanding the above, the following persons are not considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this article:

(1) An employee of the reinsurer;

(2) A United States manager of the United States branch of an alien reinsurer;

(3) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to article twenty-seven of this chapter, and whose compensation is not based on the volume of premiums written.

(4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the official charged with regulation of insurance in the state in which the manager’s principal business office is located.

(j) “Reinsurer” means any person, firm, association or corporation duly licensed or accredited in this state pursuant to the applicable provisions of this chapter as an insurer with the authority to assume reinsurance.

(k) “To be in violation” means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this article.

(l) A “qualified United States financial institution” means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and
(3) Has been determined by either the Commissioner or the securities valuation office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

§33-38-3. Licensure.

(a) No person, firm, association or corporation may act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

1. In this state, unless such reinsurance intermediary-broker is a licensed insurance producer or reinsurance intermediary in this state; or

2. In another state, unless such reinsurance intermediary-broker is a licensed insurance producer or reinsurance intermediary in this state or another state having a law substantially similar to this article or such reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(b) No person, firm, association or corporation may act as a reinsurance intermediary-manager:

1. For a reinsurer domiciled in this state, unless such reinsurance intermediary-manager is a licensed insurance producer or reinsurance intermediary in this state;

2. In this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such reinsurance intermediary-manager is a licensed insurance producer or reinsurance intermediary in this state;
(3) In another state for a nondomestic insurer, unless such reinsurance intermediary-manager is a licensed insurance producer in this state or another state having a law substantially similar to this article or such person is licensed in this state as a nonresident reinsurance intermediary.

(c) The Commissioner may require a reinsurance intermediary-manager subject to the provisions of subsection (b) of this section to:

(1) File a bond in an amount from an insurer acceptable to the Commissioner for the protection of the reinsurer; and

(2) Maintain an errors and omissions policy in an amount acceptable to the Commissioner.

(d) Licensed attorneys at law of this state when acting in their professional capacity are exempt from this section.

§33-38-3a. License applications, issuance, refusal and renewal.

(a) An applicant for a reinsurance intermediary license shall file with the Commissioner an application on the form prescribed by the Commissioner and pay a nonrefundable application fee of five hundred dollars.

(b) The application shall include: (1) For a firm or association, the name of each member of the firm or association and of each employee of the firm or association who will act as a reinsurance intermediary under the license; and (2) for a corporation, the name of each officer of the corporation and of each employee and director of the corporation who will act as a reinsurance intermediary under the license.

(c) The Commissioner shall issue a nonresident reinsurance intermediary license if: (1) The applicant is currently licensed as a resident reinsurance intermediary or insurance producer and is in good standing in his or her home state, has submitted either the application for licensure
that the person submitted to his or her home state or a completed application deemed appropriate by the Commissioner and has paid the fees required by this section; and (2) the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(d) Any license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license and all of these persons shall be named in the application and any supplements thereto. Any license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof, to act as reinsurance intermediaries on behalf of such corporation and all of these persons shall be named in the application and any supplements thereto. To add a name to or delete a name from a reinsurance intermediary license, the licensee shall submit to the Commissioner the change on a form prescribed by the Commissioner.

(e) The Commissioner may refuse to issue or renew a reinsurance intermediary license if the Commissioner finds that the applicant, any individual named on the application, a member, principal, officer or director of the applicant or a controlling person of the applicant is not trustworthy, as that term may be defined by the Commissioner in legislative rules promulgated pursuant to section twelve of this article, to act as a reinsurance intermediary, has given cause for revocation or suspension of a license or has failed to comply with a requirement for issuance of a license.

(f) Every nonresident firm, association or corporation licensed as a reinsurance intermediary in this state or acting as a reinsurance intermediary in this state but which is not licensed shall be subject to the provisions of section twelve, article four of this chapter to the same extent as licensed insurers with regard to the service of process and payment of fees.
(g) Upon written request, the Commissioner shall furnish a summary of the basis for refusal to issue or renew a license, which document shall be privileged and not subject to the provisions of article one, chapter twenty-nine-a of this code. Within ten days of receipt of the summary, if the applicant or licensee makes a written demand upon the Commissioner for a hearing to determine the reasonableness of the Commissioner’s action, a hearing shall be conducted in accordance with the provisions of section thirteen, article two of this chapter.

(h) Each license issued pursuant to this article expires on the thirtieth day of June next following the date of issuance. Between the first day of May and the first day of June of the renewal year, each licensed reinsurance intermediary shall submit to the Commissioner a renewal application and a nonrefundable annual renewal fee of two hundred dollars: Provided, That a reinsurance intermediary who allows the reinsurance intermediary license to lapse may, within eleven months from the expiration date, reinstate the same license upon payment of a renewal fee of four hundred dollars.

(i) All application and renewal fees collected by the Commissioner pursuant to the provisions of this section shall be paid into the State Treasury and credited to the special revenue account created in section thirteen, article three of this chapter.

(j) Within thirty days of a change in its legal name or mailing address, a licensee shall notify the Commissioner of such change on a form prescribed by the Commissioner, and failure to timely file such form may result in a penalty pursuant to section eleven of this article.


Except where it is otherwise specially provided, the Commissioner shall demand and receive the following fees from all reinsurance intermediaries: For receiving and
filing annual reports, one hundred dollars; for filing
certified copy of articles of incorporation, fifty dollars; for
filing copy of its charter, fifty dollars; for filing statements
preliminary to admission, one hundred dollars; for filing
of designated contract, twenty-five dollars; for filing of
notification of termination of a contract with a reinsurance
intermediary-manager by the reinsurer, ten dollars;
for filing to add or delete names on the reinsurance
intermediary license, twenty-five dollars; for filing an
address change, twenty-five dollars; for filing a legal name
change, seventy-five dollars; for filing a bond or an errors
and omissions policy, twenty-five dollars; and for filing
any additional documents as required by law or furnishing
copies thereof, copies of reports or certificates of condition
of reinsurance intermediary to be filed in any other state,
twenty dollars. All such fees shall be paid into the State
Treasury and credited to the special revenue account
created in section thirteen, article three of this chapter.


(a) The Commissioner may waive any requirements for
a nonresident license applicant with a valid license from
the applicant's home state, except the requirements
imposed by sections three and three-a of this article, if the
applicant's home state awards nonresident licenses to
residents of this state on the same basis.

(b) A nonresident reinsurance intermediary's satisfaction
of his or her home state's continuing education require-
ments for licensed insurance producers or reinsurance
intermediaries shall constitute satisfaction of this state's
continuing education requirements if the nonresident's
home state recognizes the satisfaction of its continuing
education requirements imposed upon insurance producers
or reinsurance intermediaries from this state on the same
basis.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 28th Day of April, 2005.

Governor
PRESENTED TO THE GOVERNOR

APR 27 2005

Time 2:00 PM