

FILED

2005 APR 21 P 5:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 459

(By Senator Minard)

PASSED April 7, 2005

In Effect ninety days from Passage

FILED

2005 APR 21 P 5:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 459

(BY SENATOR MINARD)

[Passed April 7, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §33-4-15 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-10-41, all relating to reinsurance; and a reinsurer's liability in an insolvency.

Be it enacted by the Legislature of West Virginia:

That §33-4-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-10-41, all to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15. Reinsurance.

- 1 (a) For purposes of this section, an "assumption reinsur-
- 2 ance agreement" means any contract which:

3 (1) Transfers insurance obligations and/or risks of
4 existing or in-force contracts of insurance from a transfer-
5 ring insurer to an assuming insurer; and

6 (2) Is intended to effect a novation of the transferred
7 contract of insurance with the result that the assuming
8 insurer becomes directly liable to the policyholders of the
9 transferring insurer and the transferring insurer's insur-
10 ance obligations and/or risks under the contracts are
11 extinguished.

12 (b) An insurer shall reinsure its risks, or any part thereof,
13 only in solvent insurers complying with the capital and
14 surplus requirements of section five-b, article three of this
15 chapter.

16 (c) Credit for reinsurance shall be governed by the
17 provisions of sections fifteen-a and fifteen-b of this article.

18 (1) No credit shall be allowed, as an admitted asset or
19 deduction from liability, to any ceding insurer for reinsur-
20 ance unless the reinsurance contract provides, in sub-
21 stance, that in the event of the insolvency of the ceding
22 insurer, the reinsurance shall be payable under a contract
23 reinsured by the assuming insurer on the basis of reported
24 claims allowed by the liquidation court, without diminu-
25 tion because of the insolvency of the ceding insurer.
26 Payments shall be made directly to the ceding insurer or to
27 its domiciliary liquidator except: (A) Where the contract or
28 other written agreement specifically provides another
29 payee of the reinsurance in the event of the insolvency of
30 the ceding insurer; or (B) where the assuming insurer, with
31 the consent of the direct insured, has assumed the policy
32 obligations of the ceding insurer as direct obligations of
33 the assuming insurer to the payees under the policies and
34 in substitution for the obligations of the ceding insurer to
35 payees.

36 (2) The reinsurance agreement may provide that the
37 domiciliary liquidator of an insolvent ceding insurer shall

38 give written notice to the assuming insurer of the pen-
39 dency of a claim against the ceding insurer on the contract
40 reinsured within a reasonable time after the claim is filed
41 in the liquidation proceeding. During the pendency of the
42 claim, any assuming insurer may investigate the claim and
43 interpose, at its own expense, in the proceeding where the
44 claim is to be adjudicated any defenses which it deems
45 available to the ceding insurer or its liquidator. The
46 expense may be filed as a claim against the insolvent
47 ceding insurer to the extent of a proportionate share of the
48 benefit which may accrue to the ceding insurer solely as a
49 result of the defense undertaken by the assuming insurer.
50 Where two or more assuming insurers are involved in the
51 same claim and a majority in interest elect to interpose a
52 defense to the claim, the expense shall be apportioned in
53 accordance with the terms of the reinsurance agreement as
54 though the expense had been incurred by the ceding
55 insurer.

56 (d) Any licensed insurer may accept reinsurance for the
57 same kinds of insurance and within the same limits as it is
58 authorized to transact direct insurance.

59 (e) A licensed insurer may reinsure all or substantially
60 all of its risks on property or lives located in West Virginia,
61 or substantially all of a major class thereof, with another
62 insurer by an assumption reinsurance agreement: *Pro-*
63 *vided*, That the assumption reinsurance agreement shall
64 not become effective unless filed in advance with and
65 approved in writing by the Commissioner: *Provided*,
66 *however*, That if a licensed insurer is deemed by the
67 Commissioner to be in hazardous financial condition, as
68 defined in article thirty-four-a of this chapter, or an
69 administrative or judicial proceeding has been instituted
70 against it for the purpose of liquidating, reorganizing or
71 conserving the insurer, and the transfer of the contracts of
72 insurance is determined by the Commissioner to be in the
73 best interest of the policyholders, the Commissioner may
74 by written order waive the advance filing and approval

75 required by this section, which waiver may include a form
76 of implied consent and adequate notification to the
77 policyholder of the circumstances requiring the transfer.

78 (f) The Commissioner shall approve a reinsurance
79 agreement within one hundred twenty days after the filing
80 of same unless he or she finds that it is inequitable to the
81 licensed insurer, its owners or its policyholders or would
82 substantially reduce the protection or service to its policy-
83 holders. If the Commissioner does not approve the agree-
84 ment, he or she shall notify the insurer in writing specify-
85 ing his or her reasons therefor. If the Commissioner does
86 not disapprove the agreement within one hundred twenty
87 days, the agreement shall be deemed approved.

88 (g) A filing may not be made pursuant to this section
89 unless the reinsurance agreement is certified under oath by
90 responsible officers of the reinsurer and the reinsured to
91 contain the entire agreement between the parties to the
92 reinsurance agreement.

93 (h) The Commissioner shall promulgate rules pursuant to
94 chapter twenty-nine-a of this code for the implementation
95 and administration of the provisions of this section to
96 include, but not be limited to, the type of assumption
97 agreements subject to the provisions of this section, their
98 content and the standards the Commissioner may utilize in
99 reviewing the agreements.

100 (i) Any insurer subject to this section is also subject to
101 the provisions of article thirty-eight of this chapter.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-41. Reinsurer's liability.

1 The amount recoverable by the liquidator from reinsur-
2 ers may not be reduced as a result of delinquency proceed-
3 ings unless the reinsurance contract provides, in substance,
4 that in the event of the insolvency of the ceding insurer,
5 the reinsurance shall be payable under a contract rein-

6 sured by the assuming insurer on the basis of reported
7 claims allowed by the liquidation court, without diminu-
8 tion because of the insolvency of the ceding insurer. The
9 payments shall be made directly to the ceding insurer or to
10 its domiciliary liquidator except: (1) Where the contract
11 or other written agreement specifically provides another
12 payee of the reinsurance in the event of the insolvency of
13 the ceding insurer; or (2) where the assuming insurer, with
14 the consent of the direct insured, has assumed the policy
15 obligations of the ceding insurer as direct obligations of
16 the assuming insurer to the payees under the policies and
17 in substitution for the obligations of the ceding insurer to
18 the payees.

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

Clayton White
.....
Chairman Senate Committee

D. Richard Brown
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Holman
.....
Clerk of the Senate

Bruce W. Sear
.....
Clerk of the House of Delegates

Earl By Tomblin
.....
President of the Senate

Robert S. Ross
.....
Speaker House of Delegates

The within *is approved* this the *21st*
Day of *April* 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 15 2005

Time 12:20 pm