WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2763

(By Kominar, Barker, Moore, Perry, Ashley, Walters and Hartman)

Passed March 10, 2007

In Effect Ninety Days from Passage
AN ACT to amend and reenact §33-7-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-33-2 and §33-33-6 of said code, all relating to financial examinations of insurers; eliminating the exclusion of certain assets in the determination of the financial condition of insurers; defining term; prohibiting use of indemnification agreements by accountants performing certain audits; and permitting mediation or arbitration agreements in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §33-7-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-33-2 and §33-33-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-3. Assets not allowed.

In addition to assets impliedly excluded by the provisions of section one of this article, the following expressly shall not
be allowed as assets in any determination of the financial condition of an insurer:

(a) Goodwill, trade names and other like intangible assets.

(b) Advances to officers (other than policy loans) whether secured or not, and advances to employees, agents and other persons on personal security only.

(c) Stock of the insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation or business unit.

(d) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies, and except, in the case of any insurer, personal property the insurer is permitted to hold pursuant to article eight of this chapter, or which is acquired through foreclosure of chattel mortgages acquired pursuant to said article or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.

(e) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this chapter.

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-2. Definitions.

(a) "Accountant" and "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice; for Canadian and British companies, the terms mean a Canadian-chartered or British-chartered accountant.
(b) "Annual statement" means the annual financial statement required to be filed by insurers with the commissioner pursuant to the provisions of this chapter.

(c) "Audited financial report" means and includes those items specified in section four of this article.

(d) "Indemnification" for the purposes of this article means an agreement of indemnity or a release from liability where the intent or effect of the agreement or release is a shifting or a limitation to any degree of the potential liability to the person or firm for failure to adhere to applicable auditing or other professional standards regardless of whether the potential liability arises from known misrepresentations made by the insurer or its representatives.

(e) "Insurer" for purposes of this article means any domestic insurer as defined in section six, article one of this chapter and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group and any licensed foreign or alien insurer defined in article one of this chapter.

(f) "Workpapers" means and includes audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and which support the opinion thereon.

§33-33-6. Qualifications of independent certified public accountants.

(a) The commissioner may not recognize any person or firm as a qualified independent certified public accountant for purposes of performing the annual audited financial report if the person or firm:
(1) Is not in good standing with the American Institute of
Certified Public Accountants and in all states in which the
accountant is licensed to practice, or, for a Canadian or
British company, that is not a chartered accountant; or

(2) Has either directly or indirectly entered into an
indemnification with respect to an audit of the insurer.

(b) Except as otherwise provided herein, the
commissioner shall recognize an independent certified public
accountant as qualified as long as he or she conforms to the
standards of his or her profession, as contained in the Code
of Professional Ethics of the American Institute of Certified
Public Accountants and the Rules and Regulations and Code
of Ethics and Rules of Professional Conduct of the West
Virginia Board of Accountancy.

(c) A qualified independent certified public accountant
may enter into an agreement with an insurer to have disputes
relating to an audit resolved by mediation or arbitration. In
the event a delinquency proceeding is commenced against the
insurer under article ten of this chapter, the mediation or
arbitration provisions shall operate at the option of the
receiver.

(d) No partner or other person responsible for rendering
a report may act in that capacity for more than seven
consecutive years. Following a period of service the person
shall be disqualified from acting in that or a similar capacity
for the same company or its insurance subsidiaries or
affiliates for a period of two years. An insurer may make
application to the commissioner for relief from the above
rotation requirement on the basis of unusual circumstances.
The commissioner may consider the following factors in
determining if the relief should be granted:

(1) Number of partners, expertise of the partners or the
number of insurance clients in the currently registered firm;

(2) Premium volume of the insurer; or
(3) Number of jurisdictions in which the insurer transacts business.

(e) The commissioner may not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:

(1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(2) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this article; or

(3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this article.

(f) The commissioner may hold a hearing to determine whether a certified public accountant is qualified and considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the audited financial report made pursuant to this article and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th day of __________, 2007.

Governor