WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

House Bill 2480

BY DELEGATES HOTT, WESTFALL, AZINGER, D. JEFFRIES, GRAVES, JENNINGS, CRISS, MANDT, NELSON, ESPINOSA AND PORTERFIELD

(BY REQUEST OF THE INSURANCE COMMISSION)

[Passed March 8, 2019; in effect ninety days from passage.]
WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

House Bill 2480

BY DELEGATES HOTT, WESTFALL, AZINGER, D. JEFFRIES,
GRAVES, JENNINGS, CRISS, MANDT, NELSON, ESPINOSA
AND PORTERFIELD

(BY REQUEST OF THE INSURANCE COMMISSION)

[Passed March 8, 2019; in effect ninety days from passage.]
AN ACT to amend and reenact §33-27-2 and §33-27-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-27-6b, all relating to the regulation of an internationally active insurance group; defining group-wide supervisor and internationally active insurance group; providing authority for the insurance commissioner to act as a group-wide supervisor for an internationally active insurance group; permitting the insurance commissioner to acknowledge another regulatory official as the group-wide supervisor for an internationally active insurance group under certain criteria; requiring insurance companies to submit information necessary for the insurance commissioner to determine whether he or she may act as the group-wide supervisor for an internationally active insurance group; authorizing specific regulatory actions when the insurance commissioner is acting as a group-wide supervisor for an internationally active insurance group; allowing the insurance commissioner to enter into agreements with insurers regarding his or her role as group-wide supervisor for an internationally active insurance group; making insurers liable for the reasonable expenses of the insurance commissioner’s participation as a group-wide supervisor for an internationally active insurance group; and rendering information provided by insurers to the insurance commissioner in connection with the commissioner’s role as a group-wide supervisor for an internationally active insurance group as confidential and privileged.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.


As used in this article:

(a) An “affiliate” of or person “affiliated” with a specific person is a person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.
(b) “Commissioner” means the West Virginia Insurance Commissioner, his or her deputies or the West Virginia offices of the Insurance Commissioner, as appropriate.

(c) “Control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (k), section four of this article that control does not exist in fact. The commissioner may determine after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact notwithstanding the absence of a presumption to that effect.

(d) “Enterprise risk” means any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital to fall into company action level, as set forth in article forty of this chapter, or would cause the insurer to be in hazardous financial condition, as set forth in article thirty-four of this chapter.

(e) “Group-wide supervisor” means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under §33-27-6b of this code to have sufficient significant contacts with the internationally active insurance group.
(f) "Insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(g) "Insurer" means any person or persons or corporation, partnership or company authorized by the laws of this state to transact the business of insurance in this state, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

(h) "Internationally active insurance group" means an insurance holding company system that includes an insurer registered under §33-27-4 of this code and meets the following criteria:

1. Premiums written in at least three countries;
2. The percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company system's total gross written premiums; and
3. Based on a three-year rolling average, the total assets of the insurance holding company system are at least $50 billion or the total gross written premiums of the insurance holding company system are at least $10 billion.

(i) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a depository institution or any similar entity or any combination of the foregoing acting in concert, but does not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

(j) A "security holder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(k) A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.
"Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

§33-27-6b. Group-wide supervision of internationally active insurance groups.

(a) The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

1. Does not have substantial insurance operations in the United States;
2. Has substantial insurance operations in the United States, but not in this state; or
3. Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in subsections (c) and (g) of this section that the other regulatory official is the appropriate group-wide supervisor.

(b) An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

(c) In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

1. The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group’s written premiums, assets or liabilities;
(2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;

(3) The location of the executive offices or largest operational offices of the internationally active insurance group;

(4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:

(A) Substantially similar to the system of regulation provided under the laws of this state; or

(B) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in subdivisions (1) through (5) of this subsection, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(d) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to subsection (c) of this section in the event of a material change in the internationally active insurance group that results in:
(1) The internationally active insurance group’s insurers domiciled in this state holding the largest share of the group’s premiums, assets or liabilities; or

(2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group.

(e) Pursuant to §33-27-6 of this code, the commissioner is authorized to collect from any insurer registered pursuant to §33-27-4 of this code all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to §33-27-4 of this code and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish on the agency’s internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

(f) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) Assess the enterprise risks within the internationally active insurance group to ensure that:

(A) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(B) Reasonable and effective mitigation measures are in place;
(2) Request from any member of an internationally active insurance group subject to the commissioner's supervision information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

(A) Governance, risk assessment and management;

(B) Capital adequacy; and

(C) Material intercompany transactions;

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of section seven of this article, through supervisory colleges as set forth in §33-27-6 of this code or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under §33-27-4 of this code, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.
Enr. HB 2480

(g) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor: Provided, That:

(1) The commissioner's cooperation is in compliance with the laws of this state; and
(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

(h) The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under §33-27-4 of this code, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(i) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.


(a) Documents, materials or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to §33-27-6 of this code and all information reported or provided to the commissioner pursuant to §33-27-3(b) (12) or §33-27-3(b) (13) of this code; §33-27-4 of this code; §33-27-5 of this code; or §33-27-6b of this code is
confidential by law and privileged, is exempt from disclosure pursuant to chapter 29-b of this code, is not open to public inspection, is not subject to subpoena, is not subject to discovery or admissible in evidence in any criminal, private civil or administrative action and is not subject to production pursuant to court order: Provided, That the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in any manner as he or she may consider appropriate.

(b) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this article may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a) of this section, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in §33-27-6a of this code, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality;
(2) Notwithstanding subdivision (1) of this subsection, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to §33-27-4(1) of this code, with commissioners of states having statutes or regulations substantially similar to subdivision (1) of this subsection and who have agreed in writing not to disclose such information;

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) Shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this article consistent with this subsection that:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal or international regulators;

(B) Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article remains with the commissioner, and the National Association of Insurance Commissioners’ use of the information is subject to the direction of the commissioner;

(C) Require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this article is
subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and

(D) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article.

(d) The sharing of information by the commissioner pursuant to this article does not constitute a delegation of regulatory authority, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(f) Documents, materials or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this article is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.
Enr. HB 2480

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

Chairman, House Committee

Member-Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within ... approved ... this the ... day of ... March ... 2019.

Governor