

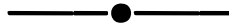
HB 2763 3
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FILED

2007 MAR 28 PM 3: 34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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COMMITTEE SUBSTITUTE

FOR OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 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.

1 In addition to assets impliedly excluded by the provisions
2 of section one of this article, the following expressly shall not

3 be allowed as assets in any determination of the financial
4 condition of an insurer:

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

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

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

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

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

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-2. Definitions.

1 (a) "Accountant" and "independent certified public
2 accountant" means an independent certified public accountant
3 or accounting firm in good standing with the American
4 Institute of Certified Public Accountants and in all states in
5 which the accountant is licensed to practice; for Canadian and
6 British companies, the terms mean a Canadian-chartered or
7 British-chartered accountant.

8 (b) "Annual statement" means the annual financial
9 statement required to be filed by insurers with the
10 commissioner pursuant to the provisions of this chapter.

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

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

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

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

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

1 (a) The commissioner may not recognize any person or
2 firm as a qualified independent certified public accountant for
3 purposes of performing the annual audited financial report if
4 the person or firm:

5 (1) Is not in good standing with the American Institute of
6 Certified Public Accountants and in all states in which the
7 accountant is licensed to practice, or, for a Canadian or
8 British company, that is not a chartered accountant; or

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

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

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

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

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

38 (2) Premium volume of the insurer; or

39 (3) Number of jurisdictions in which the insurer transacts
40 business.

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

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

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

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

55 (f) The commissioner may hold a hearing to determine
56 whether a certified public accountant is qualified and
57 considering the evidence presented, may rule that the
58 accountant is not qualified for purposes of expressing an
59 opinion on the financial statements in the audited financial
60 report made pursuant to this article and require the insurer to
61 replace the accountant with another whose relationship with
62 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



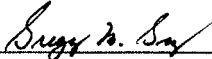
Chairman House Committee

Originating in the House.

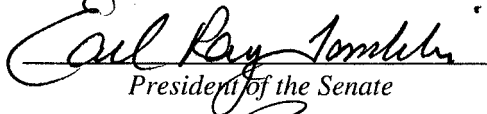
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

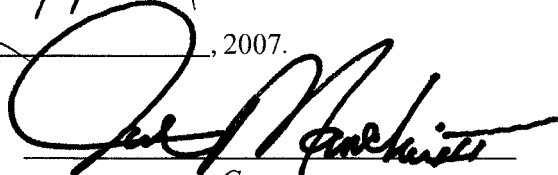


President of the Senate



Speaker of the House of Delegates

The within is appended this the 28th
day of March, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 21 2007

Time

4:05 pm