

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2745**

4 (By Delegates Perry, Hartman, Walters, Hall,
5 Ashley and Azinger)

6 (By Request of the Insurance Commissioner)

7 (Originating in the Committee on the Judiciary)

8 [February 21, 2011]

9
10 A BILL to amend and reenact §33-4-14 of the Code of West Virginia,
11 1931, as amended, relating to providing that certain
12 information provided by insurance companies to the Insurance
13 Commissioner is confidential and exempt from the freedom of
14 information disclosure requirements; providing that the
15 information is not subject to subpoena or discoverable in a
16 private civil action; commissioner's authority to release or
17 share documents otherwise treated as confidential in
18 furtherance of any regulatory or legal action brought as a
19 part of the commissioner's official duties; commissioner's
20 authority to share otherwise confidential and privileged
21 documents, materials or information with other state, federal
22 and international regulatory agencies; commissioner's
23 authority to share otherwise confidential and privileged
24 documents with state, federal and international law
25 enforcement authorities; conditions attached thereto; and
26 authorizing rulemaking.

27 *Be it enacted by the Legislature of West Virginia:*

28 That §33-4-14 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted to read as follows:

2 **ARTICLE 4. GENERAL PROVISIONS.**

3 **§33-4-14. Financial statement filings; annual and quarterly**
4 **statements; required format; foreign insurers; agents**
5 **of the commissioner.**

6 (a) Each licensed insurer shall annually on or before March
7 1, unless the time is extended by the commissioner for good cause
8 shown, file with the commissioner a true statement of its financial
9 condition, transactions and affairs as of the preceding December
10 31. Such statement shall be on the appropriate National
11 Association of Insurance Commissioners annual statement blank;
12 shall be prepared in accordance with the National Association of
13 Insurance Commissioners annual statement instructions handbook; and
14 shall follow the accounting practices and procedures prescribed by
15 the National Association of Insurance Commissioners accounting
16 practices and procedures manual as amended: *Provided*, That each
17 licensed insurer shall also file true statements of financial
18 condition on a more frequent basis if the commissioner so orders.
19 The commissioner shall establish the frequency, due date and form
20 acceptable to him or her for such filings: *Provided, however*, That
21 the statement of an alien insurer shall relate only to its
22 transactions and affairs in the United States unless the
23 commissioner requires otherwise.

24 (b) Each domestic insurer shall also file with the
25 commissioner a true quarterly statement of its financial condition,
26 transactions and affairs as of March 31, June 30, and September
27 30, of each year. Quarterly statements shall be due forty-five
28 days after the end of each quarter. All quarterly statements shall

1 be submitted on the appropriate National Association of Insurance
2 Commissioners quarterly statement blank; shall be prepared in
3 accordance with the National Association of Insurance Commissioners
4 quarterly statement instructions; and shall follow the accounting
5 practices and procedures prescribed by the National Association of
6 Insurance Commissioners accounting practices and procedures manual,
7 as amended. The commissioner may subject any licensed insurer to
8 the requirements of this section whenever the commissioner deems
9 it necessary.

10 (c) The commissioner may require that all or part of the
11 information contained in the annual statement blank and the
12 quarterly statement blanks be submitted ~~to the department~~ in a
13 computer-readable form compatible with the electronic data
14 processing system of the department.

15 (d) Each domestic, foreign and alien insurer, organization or
16 corporation ~~who~~ that is subject to the requirements of this section
17 shall annually, on or before March 1 each year, and forty-five days
18 after the end of the first, second and third calendar quarters,
19 file with the National Association of Insurance Commissioners a
20 copy of its annual statement convention blank and the quarterly
21 statement blanks, along with such additional filings as prescribed
22 by the commissioner and shall pay the fee established by the
23 National Association of Insurance Commissioners for filing, review
24 or processing of the information. The information filed with the
25 National Association of Insurance Commissioners shall be in the
26 same format and scope as that required by the commissioner and
27 shall include the signed jurat page and any other required
28 information. Any amendments and addenda to the annual statement

1 filing and quarterly statement filings subsequently filed with the
2 commissioner shall also be filed with the National Association of
3 Insurance Commissioners.

4 (e) Foreign insurers that are domiciled in a state which has
5 a law substantially similar to subsection (a) of this section shall
6 be deemed in compliance with this section.

7 (f) In the absence of actual malice, members of the National
8 Association of Insurance Commissioners, their duly authorized
9 committees, subcommittees and task forces, their delegates,
10 National Association of Insurance Commissioners employees and all
11 others charged with the responsibility of collecting, reviewing,
12 analyzing and disseminating the information developed from the
13 filing of the annual statement convention blanks and the quarterly
14 statement blanks shall be acting as agents of the commissioner
15 under the authority of this article and shall not be subject to
16 civil liability for libel, slander or any other cause of action by
17 virtue of their collection, review, and analysis or dissemination
18 of the data and information collected from the filings required
19 hereunder.

20 (g) (1) All financial analysis ratios and examination synopses
21 concerning insurance companies that are submitted to the ~~department~~
22 commissioner by the National Association of Insurance Commissioners
23 insurance regulatory information system, ~~are confidential and may~~
24 ~~not be disclosed by the department~~ and all actuarial reports, work
25 papers and actuarial summaries submitted by insurers in conjunction
26 with their annual financial statements is confidential by law and
27 privileged. These documents are not subject to disclosure pursuant
28 to chapter twenty-nine-b of this code, are not subject to subpoena

1 and are not subject to discovery or admissible as evidence in any
2 private civil action: *Provided*, That nothing in this section may
3 be construed to limit the ability of parties in a civil action to
4 discover such information from insurers under the Rules of Civil
5 Procedure.

6 (2) This subsection shall not be construed to limit the
7 commissioner's authority to release the documents to the Actuarial
8 Board for Counseling and Discipline (ABCD), so long as the material
9 is required for the purpose of professional disciplinary
10 proceedings and the ABCD establishes procedures satisfactory to the
11 commissioner for preserving the confidentiality of the documents;
12 nor shall this section be construed to limit the commissioner's
13 authority to use the documents, materials or other information in
14 furtherance of any regulatory or legal action brought as part of
15 the commissioner's official duties.

16 (3) Neither the commissioner nor any person who received
17 documents, materials or other information while acting under the
18 authority of the commissioner shall be permitted or required to
19 testify in any private civil action concerning any confidential
20 documents, materials or information subject to subparagraph (1) of
21 this subsection.

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

24 (A) May share documents, materials or other information,
25 including the confidential and privileged documents, materials or
26 information subject to subparagraph (1) of this subsection with
27 other state, federal and international regulatory agencies, and
28 with state, federal and international law enforcement authorities,

1 provided that the recipient agrees to maintain the confidentiality
2 and privileged status of the document, material or other
3 information and has the legal authority to maintain
4 confidentiality; and,

5 (B) May receive documents, materials or information, including
6 otherwise confidential and privileged documents, materials or
7 information, from the National Association of Insurance
8 Commissioners and its affiliates and subsidiaries, and from
9 regulatory and law enforcement officials of other foreign or
10 domestic jurisdictions, and shall maintain as confidential or
11 privileged any document, material or information received with
12 notice or the understanding that is is confidential or privileged
13 under the laws of the jurisdiction that is the source of the
14 document, material or information.

15 (h) The commissioner may suspend, revoke or refuse to renew
16 the certificate of authority of any insurer failing to file its
17 annual statement or the quarterly statement blanks, or any other
18 statement of financial condition required by this section, when due
19 or within any extension of time which the commissioner, for good
20 cause, may have granted.

21 (i) Any variance to the requirements of this section shall
22 require the express authorization of the commissioner.

23 (j) The commissioner shall ~~promulgate legislative~~ propose
24 rules for legislative approval in accordance with ~~the provisions~~
25 ~~of article three,~~ chapter twenty-nine-a of this code to effectuate
26 the requirements of this article.

