

COMMITTEE SUBSTITUTE

FOR

H. B. 2745

(BY DELEGATES PERRY, HARTMAN, WALTERS, HALL,
ASHLEY AND AZINGER)
[BY REQUEST OF THE INSURANCE COMMISSIONER]

(Originating in the Committee on the Judiciary)
[February 21, 2011]

A BILL to amend and reenact §33-4-14 of the Code of West Virginia, 1931, as amended, relating to providing that certain information provided by insurance companies to the Insurance Commissioner is confidential and exempt from the freedom of information disclosure requirements; providing that the information is not subject to subpoena or discoverable in a private civil action; commissioner's authority to release or share documents otherwise treated as confidential in furtherance of any regulatory or legal action brought as a part of the commissioner's official duties; commissioner's authority

to share otherwise confidential and privileged documents, materials or information with other state, federal and international regulatory agencies; commissioner's authority to share otherwise confidential and privileged documents with state, federal and international law enforcement authorities; conditions attached thereto; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That §33-4-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

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

1 (a) Each licensed insurer shall annually on or before
2 March 1, unless the time is extended by the commissioner for
3 good cause shown, file with the commissioner a true
4 statement of its financial condition, transactions and affairs
5 as of the preceding December 31. Such statement shall be on
6 the appropriate National Association of Insurance
7 Commissioners annual statement blank; shall be prepared in
8 accordance with the National Association of Insurance
9 Commissioners annual statement instructions handbook; and
10 shall follow the accounting practices and procedures

11 prescribed by the National Association of Insurance
12 Commissioners accounting practices and procedures manual
13 as amended: *Provided*, That each licensed insurer shall also
14 file true statements of financial condition on a more frequent
15 basis if the commissioner so orders. The commissioner shall
16 establish the frequency, due date and form acceptable to him
17 or her for such filings: *Provided, however*, That the statement
18 of an alien insurer shall relate only to its transactions and
19 affairs in the United States unless the commissioner requires
20 otherwise.

21 (b) Each domestic insurer shall also file with the
22 commissioner a true quarterly statement of its financial
23 condition, transactions and affairs as of March 31, June 30,
24 and September 30, of each year. Quarterly statements shall
25 be due forty-five days after the end of each quarter. All
26 quarterly statements shall be submitted on the appropriate
27 National Association of Insurance Commissioners quarterly
28 statement blank; shall be prepared in accordance with the
29 National Association of Insurance Commissioners quarterly
30 statement instructions; and shall follow the accounting
31 practices and procedures prescribed by the National
32 Association of Insurance Commissioners accounting

33 practices and procedures manual, as amended. The
34 commissioner may subject any licensed insurer to the
35 requirements of this section whenever the commissioner
36 deems it necessary.

37 (c) The commissioner may require that all or part of the
38 information contained in the annual statement blank and the
39 quarterly statement blanks be submitted to the department in
40 a computer-readable form compatible with the electronic data
41 processing system of the department.

42 (d) Each domestic, foreign and alien insurer, organization
43 or corporation ~~who~~ that is subject to the requirements of this
44 section shall annually, on or before March 1 each year, and
45 forty-five days after the end of the first, second and third
46 calendar quarters, file with the National Association of
47 Insurance Commissioners a copy of its annual statement
48 convention blank and the quarterly statement blanks, along
49 with such additional filings as prescribed by the
50 commissioner and shall pay the fee established by the
51 National Association of Insurance Commissioners for filing,
52 review or processing of the information. The information
53 filed with the National Association of Insurance
54 Commissioners shall be in the same format and scope as that

55 required by the commissioner and shall include the signed
56 jurat page and any other required information. Any
57 amendments and addenda to the annual statement filing and
58 quarterly statement filings subsequently filed with the
59 commissioner shall also be filed with the National
60 Association of Insurance Commissioners.

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

64 (f) In the absence of actual malice, members of the
65 National Association of Insurance Commissioners, their duly
66 authorized committees, subcommittees and task forces, their
67 delegates, National Association of Insurance Commissioners
68 employees and all others charged with the responsibility of
69 collecting, reviewing, analyzing and disseminating the
70 information developed from the filing of the annual statement
71 convention blanks and the quarterly statement blanks shall be
72 acting as agents of the commissioner under the authority of
73 this article and shall not be subject to civil liability for libel,
74 slander or any other cause of action by virtue of their
75 collection, review, and analysis or dissemination of the data
76 and information collected from the filings required hereunder.

77 (g)(1) All financial analysis ratios and examination
78 synopses concerning insurance companies that are submitted
79 to the ~~department~~ commissioner by the National Association
80 of Insurance Commissioners insurance regulatory
81 information system, ~~are confidential and may not be~~
82 ~~disclosed by the department~~ and all actuarial reports, work
83 papers and actuarial summaries submitted by insurers in
84 conjunction with their annual financial statements is
85 confidential by law and privileged. These documents are not
86 subject to disclosure pursuant to chapter twenty-nine-b of this
87 code, are not subject to subpoena and are not subject to
88 discovery or admissible as evidence in any private civil
89 action: *Provided*, That nothing in this section may be
90 construed to limit the ability of parties in a civil action to
91 discover such information from insurers under the Rules of
92 Civil Procedure.

93 (2) This subsection shall not be construed to limit the
94 commissioner's authority to release the documents to the
95 Actuarial Board for Counseling and Discipline (ABCD), so
96 long as the material is required for the purpose of
97 professional disciplinary proceedings and the ABCD
98 establishes procedures satisfactory to the commissioner for

99 preserving the confidentiality of the documents; nor shall this
100 section be construed to limit the commissioner's authority to
101 use the documents, materials or other information in
102 furtherance of any regulatory or legal action brought as part
103 of the commissioner's official duties.

104 (3) Neither the commissioner nor any person who
105 received documents, materials or other information while
106 acting under the authority of the commissioner shall be
107 permitted or required to testify in any private civil action
108 concerning any confidential documents, materials or
109 information subject to subparagraph (1) of this subsection.

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

112 (A) May share documents, materials or other information,
113 including the confidential and privileged documents,
114 materials or information subject to subparagraph (1) of this
115 subsection with other state, federal and international
116 regulatory agencies, and with state, federal and international
117 law enforcement authorities, provided that the recipient
118 agrees to maintain the confidentiality and privileged status of
119 the document, material or other information and has the legal
120 authority to maintain confidentiality; and,

121 (B) May receive documents, materials or information,
122 including otherwise confidential and privileged documents,
123 materials or information, from the National Association of
124 Insurance Commissioners and its affiliates and subsidiaries,
125 and from regulatory and law enforcement officials of other
126 foreign or domestic jurisdictions, and shall maintain as
127 confidential or privileged any document, material or
128 information received with notice or the understanding that is
129 is confidential or privileged under the laws of the jurisdiction
130 that is the source of the document, material or information.

131 (h) The commissioner may suspend, revoke or refuse to
132 renew the certificate of authority of any insurer failing to file
133 its annual statement or the quarterly statement blanks, or any
134 other statement of financial condition required by this
135 section, when due or within any extension of time which the
136 commissioner, for good cause, may have granted.

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

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