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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

HOUSE BILL No. 4126

(By Delegates Phillips, L. White,
Michael and Gallagher)



Passed March 11, 1994

In Effect 90 Days From Passage

ENROLLED
H. B. 4126

(By DELEGATES PHILLIPS, L. WHITE, MICHAEL AND GALLAGHER)

[Passed March 11, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen-a, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to accredited reinsurers; licensing and filing requirements; credit requirements; designating the secretary of state for service of process; annual reports; expanding trustee accounts to include corporations as well as unincorporated underwriters; required forms and reports; security requirements and definitions.

Be it enacted by the Legislature of West Virginia:

That section fifteen-a, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

1 (a) For purposes of this section, an “accredited
2 reinsurer” is one which:

3 (1) Has filed an application for accreditation and
4 received a letter of accreditation from the commissioner;

5 (2) Is licensed to transact insurance or reinsurance in
6 at least one of the fifty states of the United States or
7 the District of Columbia or, in the case of a United

8 States branch of an alien assuming insurer, is entered
9 through and licensed to transact insurance or reinsu-
10 rance in at least one of the fifty states of the United
11 States or the District of Columbia;

12 (3) Has filed with the application a certified statement
13 that the company submits to this state's jurisdiction and
14 that the company will comply with the laws, rules and
15 regulations of the state of West Virginia;

16 (4) Has filed with the application a certified statement
17 that the company submits to the examination authority
18 granted the commissioner by section nine, article two of
19 this chapter and will pay all examination costs and fees
20 as required by that section;

21 (5) Has filed with the application a copy of its most
22 recent annual statement in a form consistent with the
23 requirements of subdivision (8) of this subsection and a
24 copy of its last audited financial statement;

25 (6) Has filed any other information the commissioner
26 requests to determine that the company qualifies for
27 accreditation under this section;

28 (7) Has remitted the applicable processing fee with its
29 application for accreditation;

30 (8) Files with the commissioner after initial accred-
31 itation on or before the first day of March of each year
32 a true statement of its financial condition, transactions
33 and affairs as of the preceding thirty-first day of
34 December. The statement shall be on the appropriate
35 national association of insurance commissioners annual
36 statement blank; shall be prepared in accordance with
37 the national association of insurance commissioners
38 annual statement instructions; and shall follow the
39 accounting practices and procedures prescribed by the
40 national association of insurance commissioners account-
41 ing practices and procedures manual as amended. The
42 statement shall be accompanied by the applicable
43 annual statement filing fee. The commissioner may
44 grant extensions of time for filing of this annual
45 statement upon application by the accredited reinsurer;
46 and

47 (9) Files with the commissioner after initial accred-
48 itation by the first day of June of each year a copy of
49 its audited financial statement for the period ending the
50 preceding thirty-first day of December.

51 (b) If the commissioner determines that the assuming
52 insurer has failed to continue to meet any of these
53 qualifications, he or she may upon written notice and
54 hearing, as prescribed by section thirteen, article two of
55 this chapter, revoke an assuming insurer's accreditation.
56 Credit shall not be allowed to a ceding insurer if the
57 assuming insurers' accreditation has been revoked by
58 the commissioner after notice and hearing.

59 (c) Credit for reinsurance shall be allowed a domestic
60 ceding insurer or any foreign or alien insurer transact-
61 ing insurance in West Virginia that is domiciled in a
62 jurisdiction that employs standards regarding credit for
63 reinsurance that are not substantially similar to those
64 applicable under this article as either an asset or a
65 deduction from liability on account of reinsurance ceded
66 only when the reinsurer meets one of the following
67 requirements:

68 (1) Credit shall be allowed when the reinsurance is
69 ceded to an assuming insurer which is licensed to
70 transact insurance or reinsurance in this state.

71 (2) Credit shall be allowed when the reinsurance is
72 ceded to an assuming insurer which is accredited as a
73 reinsurer in this state prior to the effective date of the
74 reinsurance contract.

75 (3) Credit shall be allowed when the reinsurance is
76 ceded to an assuming insurer which is domiciled and
77 licensed in, or in the case of a United States branch of
78 an alien assuming insurer, is entered through one of the
79 fifty states of the United States or the District of
80 Columbia and which employs standards regarding
81 credit for reinsurance substantially similar to those
82 applicable under this statute, and the ceding insurer
83 provides evidence suitable to the commissioner that the
84 assuming insurer:

85 (A) Maintains a surplus as regards policyholders in an

86 amount not less than twenty million dollars: *Provided,*
87 That the requirements of this paragraph do not apply
88 to reinsurance ceded and assumed pursuant to pooling
89 arrangements among insurers in the same holding
90 company system;

91 (B) The ceding insurer provides the commissioner
92 with a certified statement from the assuming insurer
93 that the assuming insurer submits to the authority of
94 this state to examine its books and records granted the
95 commissioner by section nine, article two of this chapter
96 and will pay all examination costs and fees as required
97 by that section; and

98 (C) The reinsurer complies with the provisions of
99 subdivision (6), subsection (c) herein.

100 (4) Credit shall be allowed when the reinsurance is
101 ceded to an assuming insurer which maintains a trust
102 fund as required by subsection (d) herein in a qualified
103 United States financial institution, as defined by this
104 section, for the payment of the valid claims of its United
105 States policyholders and ceding insurers, their assigns
106 and successors in interest, and complies with the
107 provisions of subdivision (6) herein.

108 (5) Credit shall be allowed when the reinsurance is
109 ceded to an assuming insurer not meeting the require-
110 ments of subdivisions (1) through (4), subsection (c) of
111 this section, but only with respect to the insurance of
112 risks located in jurisdictions where such reinsurance is
113 required by applicable law or regulation of that
114 jurisdiction.

115 (6) If the assuming insurer is not licensed or accre-
116 dited to transact insurance or reinsurance in this state,
117 the credit permitted by subdivisions (3) and (4) of this
118 subsection shall not be allowed unless the assuming
119 insurer agrees in the reinsurance agreements:

120 (A) That in the event of the failure of the assuming
121 insurer to perform its obligations under the terms of the
122 reinsurance agreement, the assuming insurer, at the
123 request of the ceding insurer, shall submit to the
124 jurisdiction of any court of competent jurisdiction in any

125 state of the United States, shall comply with all
126 requirements necessary to give such court jurisdiction,
127 and shall abide by the final decision of such court or of
128 any appellate court in the event of an appeal; and

129 (B) To designate the secretary of state as its true and
130 lawful attorney upon whom may be served any lawful
131 process in any action, suit or proceeding instituted by
132 or on behalf of the ceding company. Process shall be
133 served upon the secretary of state, or accepted by him
134 or her, in the same manner as provided for service of
135 process upon unlicensed insurers under section thirteen
136 of this article: *Provided*, That this provision is not
137 intended to conflict with or override the obligation of the
138 parties to a reinsurance agreement to arbitrate their
139 disputes, if such an obligation is created in the
140 agreement.

141 (d) Whenever an assuming insurer establishes a trust
142 fund for the payment of claims pursuant to the provi-
143 sions of this section, the following requirements shall
144 apply:

145 (1) The assuming insurer shall report annually to the
146 commissioner information substantially the same as that
147 required to be reported on the national association of
148 insurance commissioners annual statement form by
149 licensed insurers to enable the commissioner to deter-
150 mine the sufficiency of the trust fund. In the case of a
151 single assuming insurer, the trust shall consist of a
152 trusted account representing the assuming insurer's
153 liabilities attributable to business written in the United
154 States and, in addition, the assuming insurer shall
155 maintain a trusted surplus of not less than twenty
156 million dollars. In the case of a group, including
157 incorporated and individual unincorporated underwri-
158 ters, the trust shall consist of a trusted account
159 representing the group's liabilities attributable to
160 business written in the United States and, in addition,
161 the group shall maintain a trusted surplus of which one
162 hundred million dollars shall be held jointly for the
163 benefit of United States ceding insurers of any member
164 of the group. The incorporated members of the group
165 shall not be engaged in any business other than

166 underwriting as a member of the group and shall be
167 subject to the same level of solvency regulation and
168 control by the group's domiciliary regulator as are the
169 unincorporated members. The group shall make avail-
170 able to the commissioner an annual certification of the
171 solvency of each underwriter by the group's domiciliary
172 regulator and its independent public accountants.

173 (2) In the case of a group of incorporated insurers
174 under common administration which complies with the
175 filing requirements contained in the previous para-
176 graph; which has continuously transacted an insurance
177 business outside the United States for at least three
178 years immediately prior to making application for
179 accreditation; which submits to this state's authority to
180 examine its books and records and bears the expense of
181 the examination; and which has aggregate policy-
182 holders' surplus of ten billion dollars, the trust shall be
183 in an amount equal to the group's several liabilities
184 attributable to business ceded by United States ceding
185 insurers to any member of the group pursuant to
186 reinsurance contracts issued in the name of the group.
187 The group shall also maintain a joint trusted surplus
188 of which one hundred million dollars shall be held
189 jointly for the benefit of United States ceding insurers
190 of any member of the group as additional security for
191 any such liabilities. Each member of the group shall
192 make available to the commissioner an annual certifi-
193 cation of the member's solvency by the member's
194 domiciliary regulator and its independent public
195 accountants.

196 (3) Any trust that is subject to the provisions of this
197 section shall be established in a form approved by the
198 commissioner. The trust instrument shall provide that
199 contested claims shall be valid and enforceable upon the
200 final order of any court of competent jurisdiction in the
201 United States. The trust shall vest legal title to its assets
202 in the trustees of the trust for its United States
203 policyholders and ceding insurers, their assigns and
204 successors in interest. The trust and the assuming
205 insurer shall be subject to examination as determined
206 by the commissioner. The trust described herein shall

207 remain in effect for as long as the assuming insurer
208 shall have outstanding obligations due under the
209 reinsurance agreements subject to the trust.

210 (4) No later than the twenty-eighth day of February
211 of each year the trustees of the trust shall report to the
212 commissioner in writing setting forth the balance of the
213 trust and listing the trust's investments at the preceding
214 year's end. The trustees shall certify the date of
215 termination of the trust, if so planned, or certify that
216 the trust shall not expire prior to the next following
217 December thirty-first.

218 (e) A reduction from liability for the reinsurance
219 ceded by a ceding insurer subject to the requirements
220 of this article to an assuming insurer not meeting the
221 requirements of subsection (c) of this section shall be
222 allowed in an amount not exceeding the liabilities
223 carried by the ceding insurer. The reduction shall be in
224 the amount of funds held by or on behalf of the ceding
225 insurer, including funds held in trust for the ceding
226 insurer, under a reinsurance contract with the assuming
227 insurer as security for the payment of obligations
228 thereunder: *Provided*, That the security is held in the
229 United States subject to withdrawal solely by, and
230 under the exclusive control of, the ceding insurer; or, in
231 the case of a trust, held in a qualified United States
232 financial institution, as defined by this section. The
233 security may be in the form of:

234 (1) Cash;

235 (2) Securities listed by the securities valuation office
236 of the national association of insurance commissioners
237 and qualifying as admitted assets; or

238 (3) Clean, irrevocable, unconditional letters of credit,
239 issued or confirmed by a qualified United States
240 financial institution, as defined by this section, no later
241 than the thirty-first day of December of the year for
242 which filing is being made, and in the possession of the
243 ceding company on or before the filing date of its annual
244 statement: *Provided*, That letters of credit meeting
245 applicable standards of issuer acceptability as of the
246 dates of their issuance or confirmation shall, notwith-

247 standing the issuing or confirming institution's subse-
248 quent failure to meet applicable standards of issuer
249 acceptability, continue to be acceptable as security until
250 their expiration, extension, renewal, modification or
251 amendment, whichever first occurs.

252 (f) For purposes of this section, a "qualified United
253 States financial institution" means an institution that:

254 (1) Is organized or licensed under the laws of the
255 United States or any state thereof;

256 (2) Is regulated, supervised and examined by United
257 States federal or state authorities having regulatory
258 authority over banks and trust companies; and

259 (3) Has been determined by either the commissioner,
260 or the securities valuation office of the national associ-
261 ation of insurance commissioners, to meet the standards
262 of financial condition and standing as are considered
263 necessary and appropriate to regulate the quality of
264 financial institutions whose letters of credit will be
265 acceptable to the commissioner.

266 (g) A "qualified United States financial institution"
267 means, for purposes of those provisions of this law
268 specifying those institutions that are eligible to act as
269 a fiduciary of a trust, an institution that:

270 (1) Is organized or, in the case of a United States
271 branch or agency office of a foreign banking organiza-
272 tion, licensed under the laws of the United States or any
273 state thereof and has been granted authority to operate
274 with fiduciary powers; and

275 (2) Is regulated, supervised and examined by federal
276 or state authorities having regulatory authority over
277 banks and trust companies.

278 (h) The provisions of this section shall apply to all
279 cessions on or after the first day of January, one
280 thousand nine hundred ninety-three.

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

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrin E. Phelps
.....
Clerk of the Senate

Donald L. Kapp
.....
Clerk of the House of Delegates

Karl Sundt
.....
President of the Senate

Chick Anderson
.....
Speaker of the House of Delegates

The within *is approved* this the *30th*
day of *March* 1994.

Gaston Capenbor
.....
Governor



PRESENTED TO THE
GOVERNOR

Date 3/28/94

Time 9:26 am