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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Committee Substitute for
SENATE BILL NO. 434

(By Senator Minard)



PASSED March 11, 1994
In Effect 90 days from Passage

E N R O L L E D
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 434

(SENATOR MINARD, *original sponsor*)

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

AN ACT to amend and reenact sections ten, eleven and twelve, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article twenty-two of said chapter; to amend and reenact section two, article twenty-three of said chapter; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; to amend and reenact sections four and five, article twenty-seven of said chapter; to amend and reenact sections one and six, article thirty-one of said chapter; to amend and reenact section three, article thirty-two of said chapter; and to further

amend said chapter by adding thereto two new articles, designated articles thirty-nine and forty, all relating to insurance; assets and liabilities; valuation of bonds; valuation of other securities; valuation of real property; farmers' mutual fire insurance companies; applicability of other provisions; fraternal benefit societies; applicability of other provisions; hospital service corporations, medical service corporations, dental service corporations and health service corporations; exemptions; applicability of insurance laws; health care corporations; supervision and regulation by insurance commissioner; exemption from insurance laws; health maintenance organization act; issuance of certificate of authority; insurance holding company systems; registration of insurers; standards; captive insurance; definitions; corporate organization; risk retention act; charter and license requirements for domestic groups; disclosure of material transactions; report; acquisitions and dispositions of assets; non-renewals, cancellations or revisions of ceded reinsurance programs; effective date; risk based capital for life and/or health insurers; definitions; risk based capital reports; company action level event; regulatory action level event; authorized control level event; mandatory control level event; hearings; confidentiality and prohibition on announcements; supplemental provisions; foreign insurers; severability clause; notices; and effective date.

Be it enacted by the Legislature of West Virginia:

That sections ten, eleven and twelve, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article twenty-two of said chapter be amended and reenacted; that section two, article twenty-three of said chapter be amended and reenacted; that section four, article twenty-four of said chapter be amended and reenacted; that section six, article twenty-five of said chapter be amended and reenacted; that section twenty-four, article twenty-five-a of said chapter be amended and reenacted; that sections four and five, article twenty-seven of said chapter be amended and reenacted; that sections one and six, article

thirty-one of said chapter be amended and reenacted; that section three, article thirty-two of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto two new articles, designated articles thirty-nine and forty, all to read as follows:

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-10. Valuation of bonds.

1 (a) All bonds or other evidences of debt having a fixed
2 term and rate of interest held by any insurer may, if
3 amply secured and not in default as to principal or
4 interest, be valued as follows:

5 (1) If purchased at par, at the par value.

6 (2) If purchased above or below par, on the basis of the
7 purchase price adjusted so as to bring the value to par at
8 maturity and so as to yield in the meantime the effective
9 rate of interest at which the purchase was made, or in
10 lieu of such method, according to such accepted method
11 of valuation as is approved by the commissioner.

12 (3) Purchase price shall in no case be taken at a higher
13 figure than the actual market value at the time of
14 purchase, plus actual brokerage, transfer, postage or
15 express charges paid in the acquisition of such securities.

16 (4) Unless otherwise provided by valuation established
17 or approved by the commissioner, no such security shall
18 be carried at above the call price for the entire issue
19 during any period within which the security may be so
20 called.

21 (b) The commissioner shall have full discretion in
22 determining the method of calculating values according
23 to the rules set forth in this section: *Provided*, That no
24 such method or valuation shall be inconsistent with any
25 applicable valuation or method used by insurers in
26 general or any such method then currently formulated or
27 approved by the committee on valuation of securities of
28 the national association of insurance commissioners or
29 its successor organization.

§33-7-11. Valuation of other securities.

1 (a) Securities, other than those referred to in section
2 ten of this article, held by an insurer shall be valued, in
3 the discretion of the commissioner, at their market value,
4 or at their appraised value, or at prices determined by
5 him as representing their fair market value, all consis-
6 tent with any current method for the valuation of any
7 such security formulated or approved by the commis-
8 sioner.

9 (b) Preferred or guaranteed stocks or shares while
10 paying full dividends may be carried at a fixed value in
11 lieu of market value, at the discretion of the commis-
12 sioner and in accordance with such method of computa-
13 tion as he may approve.

14 (c) Stock of a subsidiary corporation of an insurer shall
15 not be valued in excess of the net value thereof as based
16 upon those assets only of the subsidiary which would be
17 eligible pursuant to the provisions of this article, and
18 article eight of this chapter, for investment of funds of
19 the insurer directly.

20 (d) No valuations under this section shall be inconsis-
21 tent with any applicable valuation or method then
22 currently formulated or approved by the committee on
23 valuation of securities of the national association of
24 insurance commissioners or its successor organization.

§33-7-12. Valuation of real property.

1 (a) In the event of a default real property acquired
2 pursuant to a mortgage loan or contract for sale shall not
3 be valued at an amount greater than the unpaid
4 principal of the defaulted loan or contract at the date of
5 such acquisition, together with any taxes and expenses
6 paid or incurred in connection with such acquisition, and
7 the cost of improvements thereafter made by the insurer
8 and any amounts thereafter paid by the insurer on
9 assessments levied for improvements in connection with
10 the property.

11 (b) The value of other real property acquired or held by
12 an insurer shall in no event be valued at more than the
13 purchase price. Purchase price includes capitalized
14 permanent improvements, less depreciation as allowed
15 by the current accounting practices and procedures
16 manuals of the national association of insurance
17 commissioners. Real property that has been affected by
18 permanent declines in value shall be valued at not more
19 than market value.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Applicability of other provisions.

1 Each company to the same extent such provisions are
2 applicable to domestic mutual insurers shall be governed
3 by and be subject to the following articles of this
4 chapter: Article one (definitions); article two (insurance
5 commissioner); article four (general provisions) except
6 that section sixteen of article four shall not be applicable
7 thereto; article seven (assets and liabilities); article ten
8 (rehabilitation and liquidation) except that under the
9 provisions of section thirty-two of said article ten
10 assessments shall not be levied against any former
11 member of a farmers' mutual fire insurance company
12 who is no longer a member of the company at the time
13 the order to show cause was issued; article eleven (unfair
14 trade practices); article twelve (agents, brokers and
15 solicitors) except that the agent's license fee shall be five
16 dollars; article twenty-six (West Virginia Insurance
17 Guaranty Association Act); article twenty-seven
18 (insurance holding company systems); article thirty
19 (mine subsidence insurance) except that under the
20 provisions of section six, article thirty, a farmers' mutual
21 insurance company shall have the option of offering
22 mine subsidence coverage to all of its policyholders but
23 shall not be required to do so, article thirty-three
24 (annual audited financial report); article thirty-four
25 (administrative supervision); article thirty-four-a
26 (standards and commissioner's authority for companies
27 deemed to be in hazardous financial condition); article
28 thirty-five (criminal sanctions for failure to report

29 impairment); article thirty-six (business transacted with
30 producer-controlled property/casualty insurer); article
31 thirty-seven (managing general agents); and article
32 thirty-nine (disclosure of material transactions); but only
33 to the extent these provisions are not inconsistent with
34 the provisions of this article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Applicability of other provisions.

1 Every fraternal benefit society shall be governed and
2 be subject to the same extent as other insurers transact-
3 ing like kinds of insurance, to the following articles of
4 this chapter: Article one (definitions); article two
5 (insurance commissioner); article four (general provi-
6 sions); section thirty, article six (fee for form and rate
7 filing); article seven (assets and liabilities); article ten
8 (rehabilitation and liquidation); article eleven (unfair
9 trade practices); article twelve (agents, brokers,
10 solicitors and excess lines); article thirteen (life insur-
11 ance); article fifteen-a (long-term care insurance); article
12 twenty-seven (insurance holding company systems);
13 article thirty-three (annual audited financial report);
14 article thirty-four (administrative supervision); article
15 thirty-four-a (standards and commissioner's authority
16 for companies deemed to be in hazardous financial
17 condition); article thirty-five (criminal sanctions for
18 failure to report impairment); article thirty-seven
19 (managing general agents); and article thirty-nine
20 (disclosure of material transactions).

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE
CORPORATIONS, DENTAL SERVICE CORPORATIONS AND
HEALTH SERVICE CORPORATIONS.**

§33-24-4. Exemptions; applicability of insurance laws.

1 Every corporation defined in section two of this article
2 is hereby declared to be a scientific, nonprofit institution
3 and exempt from the payment of all property and other
4 taxes. Every corporation, to the same extent the
5 provisions are applicable to insurers transacting similar
6 kinds of insurance and not inconsistent with the

7 provisions of this article, shall be governed by and be
8 subject to the provisions as hereinbelow indicated, of the
9 following articles of this chapter: Article two (insurance
10 commissioner), except that, under section nine of said
11 article, examinations shall be conducted at least once
12 every four years; article four (general provisions), except
13 that section sixteen of said article shall not be applicable
14 thereto; section thirty-four, article six (fee for form and
15 rate filing); article six-c (guaranteed loss ratio); article
16 seven (assets and liabilities); article eleven (unfair trade
17 practices); article twelve (agents, brokers and solicitors),
18 except that the agent's license fee shall be five dollars;
19 section fourteen, article fifteen (individual accident and
20 sickness insurance); article fifteen-a (long-term care
21 insurance); section three, article sixteen (required policy
22 provisions); section three-a, article sixteen (mental
23 illness); section three-c, article sixteen (group accident
24 and sickness insurance); section three-d, article sixteen
25 (medicare supplement insurance); section three-f, article
26 sixteen (treatment of temporomandibular joint disorder
27 and craniomandibular disorder); article sixteen-a (group
28 health insurance conversion); article sixteen-c (small
29 employer group policies); article sixteen-d (marketing
30 and rate practices for small employers); article twenty-
31 six-a (West Virginia life and health insurance guaranty
32 association act), after the first day of October, one
33 thousand nine hundred ninety-one; article twenty-seven
34 (insurance holding company systems); article twenty-
35 eight (individual accident and sickness insurance
36 minimum standards); article thirty-three (annual audited
37 financial report); article thirty-four (administrative
38 supervision); article thirty-four-a (standards and
39 commissioner's authority for companies deemed to be in
40 hazardous financial condition); article thirty-five
41 (criminal sanctions for failure to report impairment);
42 article thirty-seven (managing general agents); and
43 article thirty-nine (disclosure of material transactions);
44 and no other provision of this chapter may apply to these
45 corporations unless specifically made applicable by the
46 provisions of this article. If, however, any such corpora-

47 tion is converted into a corporation organized for a
48 pecuniary profit, or if it transacts business without
49 having obtained a license as required by section five of
50 this article, it shall thereupon forfeit its right to these
51 exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

**§33-25-6. Supervision and regulation by insurance commis-
sioner; exemption from insurance laws.**

1 Corporations organized under this article are subject
2 to supervision and regulation of the insurance commis-
3 sioner. The corporations organized under this article, to
4 the same extent these provisions are applicable to
5 insurers transacting similar kinds of insurance and not
6 inconsistent with the provisions of this article, shall be
7 governed by and be subject to the provisions as
8 hereinbelow indicated, of the following articles of this
9 chapter: Article four (general provisions), except that
10 section sixteen of said article shall not be applicable
11 thereto; article six-c (guaranteed loss ratio); article seven
12 (assets and liabilities); article eight (investments); article
13 ten (rehabilitation and liquidation); section fourteen,
14 article fifteen (individual accident and sickness insur-
15 ance); section three, article sixteen (required policy
16 provisions); article sixteen-a (group health insurance
17 conversion); article sixteen-c (small employer group
18 policies); article sixteen-d (marketing and rate practices
19 for small employers); article twenty-six-a (West Virginia
20 life and health insurance guaranty association act);
21 article twenty-seven (insurance holding company
22 systems); article thirty-three (annual audited financial
23 report); article thirty-four-a (standards and commis-
24 sioner's authority for companies deemed to be in
25 hazardous financial condition); article thirty-five
26 (criminal sanctions for failure to report impairment);
27 article thirty-seven (managing general agents); and
28 article thirty-nine (disclosure of material transactions);
29 and no other provision of this chapter may apply to these
30 corporations unless specifically made applicable by the

31 provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Statutory construction and relationship to other laws.

1 (a) Except as otherwise provided in this article,
2 provisions of the insurance laws and provisions of
3 hospital or medical service corporation laws shall not be
4 applicable to any health maintenance organization
5 granted a certificate of authority under this article. This
6 provision shall not apply to an insurer or hospital or
7 medical service corporation licensed and regulated
8 pursuant to the insurance laws or the hospital or medical
9 service corporation laws of this state except with respect
10 to its health maintenance corporation activities
11 authorized and regulated pursuant to this article.

12 (b) Factually accurate advertising or solicitation
13 regarding the range of services provided, the premiums
14 and copayments charged, the sites of services and hours
15 of operation, and any other quantifiable, nonprofessional
16 aspects of its operation by a health maintenance
17 organization granted a certificate of authority, or its
18 representative shall not be construed to violate any
19 provision of law relating to solicitation or advertising by
20 health professions: *Provided*, That nothing contained
21 herein shall be construed as authorizing any solicitation
22 or advertising which identifies or refers to any individ-
23 ual provider, or makes any qualitative judgment
24 concerning any provider.

25 (c) Any health maintenance organization authorized
26 under this article shall not be deemed to be practicing
27 medicine and shall be exempt from the provision of
28 chapter thirty of this code, relating to the practice of
29 medicine.

30 (d) The provisions of section fifteen, article four
31 (general provisions); article six-c (guaranteed loss ratio);
32 article seven (assets and liabilities); article eight
33 (investments); section fourteen, article fifteen (individual

34 accident and sickness insurance); article fifteen-b
35 (uniform health care administration act); section three,
36 article sixteen (required policy provisions); section
37 three-f, article sixteen (treatment of temporomandibular
38 disorder and craniomandibular disorder); article sixteen-
39 a (group health insurance conversion); article sixteen-c
40 (small employer group policies); article sixteen-d
41 (marketing and rate practices for small employers);
42 article twenty-seven (insurance holding company
43 systems); article thirty-four-a (standards and commis-
44 sioner's authority for companies deemed to be in
45 hazardous financial condition); article thirty-five
46 (criminal sanctions for failure to report impairment);
47 article thirty-seven (managing general agents); and
48 article thirty-nine (disclosure of material transactions)
49 shall be applicable to any health maintenance organiza-
50 tion granted a certificate of authority under this article.

51 (e) Any long-term care insurance policy delivered or
52 issued for delivery in this state by a health maintenance
53 organization shall comply with the provisions of article
54 fifteen-a of this chapter.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-4. Registration of insurers.

1 (a) Every insurer which is authorized to do business in
2 this state and which is a member of an insurance holding
3 company system shall register with the commissioner,
4 except a foreign insurer subject to disclosure require-
5 ments and standards adopted by statute or regulation in
6 the jurisdiction of its domicile which are substantially
7 similar to those contained in this section. Any insurer
8 which is subject to registration under this section shall
9 register within sixty days after the effective date of this
10 article or fifteen days after it becomes subject to
11 registration, whichever is later, and annually thereafter
12 by the first day of June of each year for the previous
13 calendar year, unless the commissioner for good cause
14 shown extends the time for registration, and then within
15 such extended time. The commissioner may require any

16 authorized insurer which is a member of a holding
17 company system which is not subject to registration
18 under this section to furnish a copy of the registration
19 statement, the summary described in subsection (c) of
20 this section, or other information filed by such insurance
21 company with the insurance regulatory authority of
22 domiciliary jurisdiction.

23 (b) Every insurer subject to registration shall file a
24 registration statement on a form prescribed by the
25 national association of insurance commissioners, which
26 shall contain current information about:

27 (1) The capital structure, general financial condition,
28 ownership and management of the insurer and any
29 person controlling the insurer.

30 (2) The identity and relationship of every member of
31 the insurance holding company system.

32 (3) The following agreements in force, relationships
33 subsisting, and transactions currently outstanding or
34 which have occurred during the last calendar year
35 between such insurer and its affiliates:

36 (A) Loans, other investments, or purchases, sales or
37 exchanges of securities of the affiliates by the insurer or
38 of the insurer by its affiliates;

39 (B) Purchases, sales or exchanges of assets;

40 (C) Transactions not in the ordinary course of business;

41 (D) Guarantees or undertakings for the benefit of an
42 affiliate which result in an actual contingent exposure of
43 the insurer's assets to liability, other than insurance
44 contracts entered into in the ordinary course of the
45 insurer's business;

46 (E) All management and service contracts and all cost-
47 sharing arrangements;

48 (F) All reinsurance agreements;

49 (G) Dividends and other distributions to shareholders;

50 and

51 (H) Any pledge of the insurer's stock, including stock
52 of any subsidiary or controlling affiliate, for a loan made
53 to any member of the insurance holding company system.

54 (4) Other matters concerning transactions between
55 registered insurers and any affiliates as may be included
56 from time to time in any registration forms adopted or
57 approved by the commissioner.

58 (c) All registration statements shall contain a summary
59 outlining all items in the current registration statement
60 representing changes from the prior registration
61 statement.

62 (d) Information need not be disclosed on the registra-
63 tion statement filed pursuant to subsection (b) of this
64 section if such information is not material for the
65 purpose of this section. Unless the commissioner by rule
66 or order provides otherwise, sales, purchases, exchanges,
67 loans or extensions of credit, or investments, involving
68 one half of one percent or less of an insurer's admitted
69 assets as of the thirty-first day of December next
70 preceding shall not be deemed material for purposes of
71 this section.

72 (e) Each registered insurer shall keep current the
73 information required to be disclosed in its registration
74 statement by reporting all material changes or additions
75 on amendment forms provided by the commissioner
76 within fifteen days after the end of the month in which
77 it learns of each such change or addition.

78 (f) Subject to subsection (c), section five of this article,
79 each registered insurer shall report to the commissioner
80 all dividends and other distributions to shareholders
81 within fifteen business days following the declaration
82 thereof.

83 (g) Any person within an insurance holding company
84 system subject to registration shall be required to
85 provide complete and accurate information to an insurer,

86 when such information is reasonably necessary to enable
87 the insurer to comply with the provisions of this article.

88 (h) The commissioner shall terminate the registration
89 of any insurer which demonstrates that it no longer is a
90 member of an insurance holding company system.

91 (i) The commissioner may require or allow two or more
92 affiliated insurers subject to registration hereunder to
93 file a consolidated registration statement or consolidated
94 reports amending their consolidated registration
95 statement or their individual registration statements.

96 (j) The commissioner may allow an insurer which is
97 authorized to do business in this state and which is a
98 part of an insurance holding company system to register
99 on behalf of any affiliated insurer which is required to
100 register under subsection (a) of this section and to file all
101 information and material required to be filed under this
102 section.

103 (k) The provisions of this section shall not apply to any
104 insurer, information or transaction if and to the extent
105 that the commissioner by rule or order shall exempt the
106 same from the provisions of this section.

107 (l) Any person may file with the commissioner a
108 disclaimer of affiliation with any authorized insurer or
109 such a disclaimer may be filed by such insurer or any
110 member of an insurance holding company system. The
111 disclaimer shall fully disclose all material relationships
112 and bases for affiliation between such person and such
113 insurer as well as the basis for disclaiming such
114 affiliation. After a disclaimer has been filed, the insurer
115 shall be relieved of any duty to register or report under
116 this section which may arise out of the insurer's
117 relationship with such person unless and until the
118 commissioner disallows such a disclaimer. The commis-
119 sioner shall disallow such a disclaimer only after
120 furnishing all parties in interest with notice and
121 opportunity to be heard and after making specific
122 findings of fact to support such disallowance.

123 (m) The failure to file a registration statement or any
124 amendment thereto required by this section within the
125 time specified for such filing shall be a violation of this
126 section.

§33-27-5. Standards.

1 (a) Transactions by registered insurers with their
2 affiliates shall be subject to the following standards:

3 (1) The terms shall be fair and reasonable;

4 (2) Charges or fees for services performed shall be
5 reasonable;

6 (3) Expenses incurred and payment received shall be
7 allocated to the insurer in conformity with customary
8 insurance accounting practices consistently applied;

9 (4) The books, accounts and records of each party shall
10 be so maintained as to clearly and accurately disclose the
11 precise nature and details of the transactions, including
12 such accounting information as is necessary to support
13 the reasonableness of the charges or fees to the respec-
14 tive parties; and

15 (5) The insurer's surplus as regards policyholders
16 following any dividends or distributions to shareholder
17 affiliates shall be reasonable in relation to the insurer's
18 outstanding liabilities and adequate to its financial
19 needs.

20 (b) For purposes of this article, in determining whether
21 an insurer's surplus as regards policyholders is reason-
22 able in relation to the insurer's outstanding liabilities
23 and adequate to its financial needs, the following factors,
24 among others, shall be considered:

25 (1) The size of the insurer as measured by its assets,
26 capital and surplus, reserves, premium writings,
27 insurance in force and other appropriate criteria;

28 (2) The extent to which the insurer's business is
29 diversified among the several lines of insurance;

30 (3) The number and size of risks insured in each line of
31 business;

32 (4) The extent of the geographical dispersion of the
33 insurer's insured risks;

34 (5) The nature and extent of the insurer's reinsurance
35 program;

36 (6) The quality, diversification and liquidity of the
37 insurer's investment portfolio;

38 (7) The recent past and projected future trend in the
39 size of the insurer's surplus as regards policyholders;

40 (8) The surplus as regards policyholders maintained by
41 other comparable insurers;

42 (9) The adequacy of the insurer's reserves; and

43 (10) The quality and liquidity of investments in
44 affiliates. The commissioner may treat any such
45 investment as a disallowed asset for purposes of
46 determining the adequacy of surplus as regards
47 policyholders whenever in his or her judgment such
48 investment so warrants.

49 (c) An insurer subject to registration under section four
50 of this article shall not pay any extraordinary dividend
51 or make any other extraordinary distribution to its
52 shareholders until: (1) Thirty days after the commis-
53 sioner has received notice of the declaration thereof and
54 has not within such period disapproved such payment; or
55 (2) the commissioner shall have approved such payment
56 within such thirty-day period.

57 (d) For purposes of this section, an extraordinary
58 dividend or distribution includes any dividend or
59 distribution of cash or other property, whose fair market
60 value together with that of other dividends or distribu-
61 tions made within the preceding twelve months exceeds
62 the lesser of: (1) Ten percent of such insurer's surplus as
63 regards policyholders as of the thirty-first day of
64 December next preceding; or (2) the net gain from

65 operations of such insurer, if such insurer is a life
66 insurer, or the net income, if such insurer is not a life
67 insurer, not including realized capital gains, for the
68 twelve-month period ending the thirty-first day of
69 December next preceding, but shall not include pro rata
70 distributions of any class of the insurer's own securities.
71 In determining whether a dividend or distribution is
72 extraordinary, an insurer other than a life insurer may
73 carry forward net income from the previous two
74 calendar years that has not already been paid out as
75 dividends. This carry-forward shall be computed by
76 taking the net income from the second and third
77 preceding calendar years, not including realized capital
78 gains, less dividends paid in the second and immediate
79 preceding calendar years.

80 (e) Notwithstanding any other provision of law, an
81 insurer may declare an extraordinary dividend or
82 distribution which is conditional upon the commis-
83 sioner's approval thereof, and such a declaration shall
84 confer no rights upon shareholders until: (1) The
85 commissioner has approved the payment of such
86 dividend or distribution; or (2) the commissioner has not
87 disapproved such payment within the thirty-day period
88 referred to above.

89 (f) The following transactions involving a domestic
90 insurer and any person in its holding company system
91 may not be entered into unless the insurer has notified
92 the commissioner in writing of its intention to enter into
93 such transaction at least thirty days prior thereto, or
94 such shorter period as the commissioner may permit, and
95 the commissioner has not disapproved it within such
96 period:

97 (1) Sales, purchases, exchanges, loans or extensions of
98 credit, guarantees or investments provided such
99 transactions are equal to or exceed: The lesser of one
100 percent of the insurer's admitted assets or ten percent of
101 surplus as regards policyholders; each as of the thirty-
102 first day of December next preceding;

103 (2) Loans or extensions of credit to any person who is
104 not an affiliate, where the insurer makes such loans or
105 extensions of credit with the agreement or understand-
106 ing that the proceeds of such transactions, in whole or in
107 substantial part, are to be used to make loans or
108 extensions of credit to, purchase assets of, or to make
109 investments in, any affiliate of the insurer making such
110 loans or extensions of credit provided such transactions
111 are equal to or exceed: The lesser of one percent of the
112 insurer's admitted assets or ten percent of surplus as
113 regards policyholders; each as of the thirty-first day of
114 December next preceding;

115 (3) Reinsurance agreements or modifications thereto in
116 which the reinsurance premium or a change in the
117 insurer's liabilities equals or exceeds five percent of the
118 insurer's surplus as regards policyholders, as of the
119 thirty-first day of December next preceding, including
120 those agreements which may require as consideration the
121 transfer of assets from an insurer to a nonaffiliate, if an
122 agreement or understanding exists between the insurer
123 and nonaffiliate that any portion of such assets will be
124 transferred to one or more affiliates of the insurer;

125 (4) All management agreements, service contracts and
126 all cost-sharing arrangements; and

127 (5) Any material transactions, specified by rule, which
128 the commissioner determines may adversely affect the
129 interests of the insurer's policyholders.

130 (g) Nothing contained in subsection (h) herein shall be
131 deemed to authorize or permit any transactions which,
132 in the case of an insurer not a member of the same
133 holding company system, would be otherwise contrary to
134 law.

135 (h) A domestic insurer shall not enter into transactions
136 which are part of a plan or series of like transactions
137 with persons within the holding company system if the
138 purpose of those separate transactions is to avoid the
139 statutory threshold amount and thus avoid the review

140 that would occur otherwise. If the commissioner
141 determines that such separate transactions were entered
142 into over any twelve-month period for such purpose, he
143 or she may exercise his or her authority under section
144 nine.

145 (i) The commissioner, in reviewing transactions
146 pursuant to subsection (f) of this section, shall consider
147 whether the transactions comply with the standards set
148 forth in subsection (a) of this section and whether they
149 may adversely affect the interests of policyholders.

150 (j) The commissioner shall be notified within thirty
151 days of any investment of the domestic insurer in any
152 one corporation if the total investment in such corpora-
153 tion by the insurance holding company system exceeds
154 ten percent of such corporation's voting securities.

155 (k) With regard to domestic insurers, the following
156 requirements apply:

157 (1) Notwithstanding the control of a domestic insurer
158 by any person, the officers and directors of the insurer
159 shall not thereby be relieved of any obligation or liability
160 to which they would otherwise be subject by law, and the
161 insurer shall be managed so as to assure its separate
162 operating identity consistent with the provisions of this
163 chapter.

164 (2) Nothing herein shall preclude a domestic insurer
165 from having or sharing a common management or
166 cooperatively, or jointly using personnel, property or
167 services with one or more other persons under arrange-
168 ments meeting the standards of subsection (a) of this
169 section.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.

1 As used in this chapter, unless the context requires
2 otherwise:

3 (1) "Affiliated company" means any company in the

4 same corporate system as a parent, an industrial insured,
5 or a member organization by virtue of common owner-
6 ship, control, operation or management.

7 (2) "Association" means any legal association of
8 individuals, corporations, partnerships or associations
9 that has been in continuous existence for at least one
10 year, the member organizations of which collectively:

11 (A) Own, control or hold with power to vote all of the
12 outstanding voting securities of an association captive
13 insurance company incorporated as a stock insurer; or

14 (B) Have complete voting control over an association
15 captive insurance company incorporated as a mutual
16 insurer.

17 (3) "Association captive insurance company" means
18 any company that insures risks of the member organiza-
19 tions of the association, and their affiliated companies.

20 (4) "Captive insurance company" means any pure
21 captive insurance company, association captive insur-
22 ance company, or industrial insured captive insurance
23 company formed or licensed under the provisions of this
24 chapter.

25 (5) "Commissioner" means the insurance commissioner
26 of West Virginia.

27 (6) "Industrial insured" means an insured:

28 (A) Who procures the insurance of any risk or risks by
29 use of the services of a full-time employee acting as an
30 insurance manager or buyer;

31 (B) Whose aggregate annual premiums for insurance on
32 all risks total at least twenty-five thousand dollars; and

33 (C) Who has at least twenty-five full-time employees.

34 (7) "Industrial insured captive insurance company"
35 means any company that insures risks of the industrial
36 insureds that comprise the industrial insured group and
37 their affiliated companies.

38 (8) "Industrial insured group" means any group that
39 meets the following criteria:

40 Any group of industrial insureds that collectively:

41 (i) Own, control or hold with power to vote all of the
42 outstanding voting securities of an industrial insured
43 captive insurance company incorporated as a stock
44 insurer; or

45 (ii) Have complete voting control over an industrial
46 insured captive insurance company incorporated as a
47 mutual insurer.

48 (9) "Member organization" means any individual,
49 corporation, partnership or association that belongs to
50 an association.

51 (10) "Parent" means a corporation, partnership or
52 individual that directly or indirectly owns, controls or
53 holds with power to vote more than fifty percent of the
54 outstanding voting securities of a pure captive insurance
55 company.

56 (11) "Pure captive insurance company" means any
57 company that insures risks of its parent and affiliated
58 companies.

§33-31-6. Corporate organization.

1 (a) A pure captive insurance company shall be
2 incorporated as a stock insurer with its capital divided
3 into shares and held by the stockholders.

4 (b) An association captive insurance company or an
5 industrial insured captive insurance company may be
6 incorporated:

7 (1) As a stock insurer with its capital divided into
8 shares and held by the stockholders; or

9 (2) As a mutual insurer without capital stock, the
10 governing body of which is elected by the member
11 organizations of its association.

12 (c) A captive insurance company shall have at least one

13 incorporator who shall be a resident of this state.

14 (d) Before the articles of association are transmitted to
15 the secretary of state, the incorporators shall petition the
16 commissioner to issue a certificate setting forth his or
17 her finding that the establishment and maintenance of
18 the proposed corporation will promote the general good
19 of the state. In arriving at such finding the commissioner
20 shall consider:

21 (1) The character, reputation, financial standing and
22 purpose of the incorporators;

23 (2) The character, reputation, financial responsibility,
24 insurance experience and business qualifications of the
25 officers and directors; and

26 (3) Such other aspects as the commissioner deems
27 advisable.

28 (e) The articles of association, such certificate and the
29 organization fee shall be transmitted to the secretary of
30 state, who shall thereupon record both the articles of
31 incorporation and the certificate.

32 (f) The capital stock of a captive insurance company
33 incorporated as a stock insurer shall be issued at not less
34 than par value.

35 (g) At least one of the members of the board of
36 directors of a captive insurance company incorporated in
37 this state shall be a resident of this state.

38 (h) Captive insurance companies formed under the
39 provisions of this chapter shall have the privileges and
40 be subject to the provisions of the general corporation
41 law as well as the applicable provisions contained in this
42 chapter. Captive insurance companies are subject to the
43 provisions of article thirty-three, article thirty-four,
44 article thirty-seven and article thirty-nine of this
45 chapter. In the event of conflict between the provisions
46 of said general corporation law and the provisions of this
47 chapter, the latter shall control.

ARTICLE 32. RISK RETENTION ACT.

§33-32-3. Charter and license requirements for domestic groups.

1 (a) A risk retention group shall, pursuant to the
2 provisions of article five of this chapter, be chartered
3 and licensed to write only liability insurance pursuant to
4 this article and, except as provided elsewhere in this
5 article, shall comply with all of the laws, rules and
6 requirements applicable to insurers chartered and
7 licensed in this state and with section four of this article,
8 to the extent such requirements are not a limitation on
9 laws, rules or requirements of this state.

10 (b) Notwithstanding any other provision of this chapter
11 to the contrary, all risk retention groups chartered in
12 this state shall file with the commissioner and the
13 national association of insurance commissioners, an
14 annual statement on a form prescribed by the national
15 association of insurance commissioners and in diskette
16 form, if required by the commissioner and completed in
17 accordance with the national association of insurance
18 commissioners' instructions and the national association
19 of insurance commissioners accounting practices and
20 procedures manual.

21 (c) Before it may offer insurance in any state, each risk
22 retention group shall also submit for approval by the
23 insurance commissioner of this state a plan of operation
24 or feasibility study. The risk retention group shall
25 submit an appropriate revision of such plan or study, in
26 the event of any subsequent material change in any item
27 of the plan of operation or feasibility study, within ten
28 days of any such change. The risk retention group shall
29 not offer any additional kinds of liability insurance, in
30 this state or in any other state, until a revision of the
31 plan or study is approved by the commissioner.

32 (d) At the time of filing its application for a charter,
33 the risk retention group shall provide to the commis-
34 sioner in summary form the following information: The
35 identity of the initial members of the group, the identity

36 of those individuals who organized the group or who will
37 provide administrative services or otherwise influence or
38 control the activities of the group, the amount and
39 nature of initial capitalization, the coverages to be
40 afforded, and the states in which the group intends to
41 operate. Upon receipt of this information, the commis-
42 sioner shall forward the information to the national
43 association of insurance commissioners. Providing
44 notification to the national association of insurance
45 commissioners is in addition to and shall not be
46 sufficient to satisfy the requirements of section four or
47 any other sections of this article.

48 (e) Risk retention groups are subject to the provisions
49 of article thirty-three, article thirty-four, article thirty-
50 seven and article thirty-nine of this chapter.

ARTICLE 39. DISCLOSURE OF MATERIAL TRANSACTIONS.

§33-39-1. Report.

1 (a) Every insurer domiciled in this state shall file a
2 report with the commissioner disclosing material
3 acquisitions and dispositions of assets or material
4 nonrenewals, cancellations or revisions of ceded
5 reinsurance programs unless such acquisitions and
6 dispositions of assets or material nonrenewals, cancella-
7 tions or revisions of ceded reinsurance programs have
8 been submitted to the commissioner for review, approval
9 or information purposes pursuant to other provisions of
10 this chapter.

11 (b) The report required in subsection (a) of this section
12 is due within fifteen days after the end of the calendar
13 month in which any of the foregoing transactions occur.

14 (c) One complete copy of the report, including any
15 exhibits or other attachments filed as part thereof, shall
16 be filed with:

17 (1) The insurance commissioner; and

18 (2) The national association of insurance commission-
19 ers.

20 (d) All reports obtained by or disclosed to the commis-
21 sioner pursuant to this article, shall be given confidential
22 treatment and shall not be subject to subpoena and shall
23 not be made public by the commissioner, the national
24 association of insurance commissioners, or any other
25 person, except to insurance departments of other states,
26 without the prior written consent of the insurer to which
27 it pertains unless the commissioner, after giving the
28 insurer who would be affected thereby, notice and an
29 opportunity to be heard, determines that the interest of
30 policyholders, shareholders or the public will be served
31 by the publication thereof, in which event the commis-
32 sioner may publish all or any part thereof in such
33 manner as he or she may deem appropriate.

§33-39-2. Acquisitions and dispositions of assets.

1 (a) No acquisitions or dispositions of assets need be
2 reported pursuant to section one of this article if the
3 acquisitions or dispositions are not material. For
4 purposes of this article, a material acquisition, or the
5 aggregate of any series of acquisitions during any thirty-
6 day period, is one that is nonrecurring and not in the
7 ordinary course of business and involves more than five
8 percent of the reporting insurer's total admitted assets as
9 reported in its most recent statutory statement filed with
10 the insurance commissioner. For purposes of this article,
11 a material disposition, or the aggregate of any series of
12 dispositions during any thirty-day period, is one that is
13 nonrecurring and not in the ordinary course of business
14 and involves more than five percent of the reporting
15 insurer's total admitted assets as reported in its most
16 recent statutory statement filed with the insurance
17 commissioner.

18 (b) Asset acquisitions subject to this article include
19 every purchase, lease, exchange, merger, consolidation,
20 succession or other acquisition other than the construc-
21 tion or development of real property by or for the
22 reporting insurer or the acquisition of materials for such
23 purpose.

24 (c) Asset dispositions subject to this article include
25 every sale, lease, exchange, merger, consolidation,
26 mortgage, hypothecation, assignment, whether for the
27 benefit of creditors or otherwise, abandonment,
28 destruction or other disposition.

29 (d) The following information is required to be
30 disclosed in any report of a material acquisition or
31 disposition of assets:

32 (1) Date of the transaction;

33 (2) Manner of acquisition or disposition;

34 (3) Description of the assets involved;

35 (4) Nature and amount of the consideration given or
36 received;

37 (5) Purpose of, or reason for, the transaction;

38 (6) Manner by which the amount of consideration was
39 determined;

40 (7) Gain or loss recognized or realized as a result of the
41 transaction; and

42 (8) Name(s) of the person(s) from whom the assets were
43 acquired or to whom they were disposed.

44 (e) Insurers are required to report material acquisitions
45 and dispositions on a nonconsolidated basis unless the
46 insurer is part of a consolidated group of insurers which
47 utilizes a pooling arrangement or a one hundred percent
48 reinsurance agreement that affects the solvency and
49 integrity of the insurer's reserves and such insurer ceded
50 substantially all of its direct and assumed business to a
51 pool. An insurer is deemed to have ceded "substantially
52 all" of its direct and assumed business to a pool if the
53 insurer has less than one million dollars of total direct
54 plus assumed written premiums during a calendar year
55 that are not subject to the pooling arrangement and the
56 net income of the business not subject to the pooling
57 arrangement represents less than five percent of the
58 insurer's capital and surplus. If a group of insurers

59 reports on a consolidated basis as here allowed, the
60 report should identify the individual insurers that are
61 members of the group.

§33-39-3. Nonrenewals, cancellations or revisions of ceded reinsurance programs.

1 (a) No nonrenewals, cancellations or revisions of ceded
2 reinsurance programs need be reported pursuant to
3 section one of this article if the nonrenewals, cancellations
4 or revisions are not material. For purposes of this
5 article, a material nonrenewal, cancellation or revision
6 is one that affects for property and casualty business,
7 including accident and health business when written as
8 such, more than fifty percent of an insurer's ceded
9 written premium, or for life, annuity and accident and
10 health business, more than fifty percent of the total
11 reserve credit taken for business ceded, on an annualized
12 basis as indicated in the insurer's most recently filed
13 statutory statement: *Provided*, That no filing is required
14 if the insurer's ceded written premium or the total
15 reserve credit taken for business ceded represents, on an
16 annualized basis, less than ten percent of direct plus
17 assumed written premium or ten percent of the statutory
18 reserve requirement prior to any cession, respectively.

19 (b) Subject to the criteria outlined above, a report is to
20 be filed without regard to which party has initiated the
21 nonrenewal, cancellation or revision of ceded reinsurance
22 whenever one or more of the following conditions
23 exist:

24 (1) The entire cession has been canceled, nonrenewed
25 or revised and ceded indemnity and loss adjustment
26 expense reserves after any nonrenewal, cancellation or
27 revision represent less than fifty percent of the comparable
28 reserves that would have been ceded had the
29 nonrenewal, cancellation or revision not occurred;

30 (2) An authorized or accredited reinsurer has been
31 replaced on an existing cession by an unauthorized
32 reinsurer; or

33 (3) Collateral requirements previously established for
34 unauthorized reinsurers have been reduced. For
35 example, the requirement to collateralize incurred but
36 not reported claim reserves has been waived with respect
37 to one or more unauthorized reinsurers newly participat-
38 ing in an existing cession.

39 (4) Subject to the materiality criteria, for purposes of
40 subdivisions (2) and (3) above, a report shall be filed if
41 the result of the revision affects more than ten percent of
42 the cession.

43 (c) The following information is required to be
44 disclosed in any report of a material nonrenewal,
45 cancellation or revision of a ceded reinsurance program:

46 (1) Effective date of the nonrenewal, cancellation or
47 revision;

48 (2) The description of the transaction with an identifi-
49 cation of the initiator thereof;

50 (3) Purpose of, or reason for, the transaction; and

51 (4) If applicable, the identity of the replacement
52 reinsurers.

53 (d) Insurers are required to report all material
54 nonrenewals, cancellations or revisions of ceded
55 reinsurance agreements on a nonconsolidated basis
56 unless the insurer is part of a consolidated group of
57 insurers which utilizes a pooling arrangement or a one
58 hundred percent reinsurance agreement that affects the
59 solvency and integrity of the insurer's reserves and the
60 insurer ceded substantially all of its direct and assumed
61 business to a pool. An insurer is deemed to have ceded
62 "substantially all" of its direct and assumed business to
63 a pool if the insurer has less than one million dollars of
64 total direct plus assumed written premiums during a
65 calendar year that are not subject to the pooling
66 arrangement and the net income of the business not
67 subject to the pooling arrangement represents less than
68 five percent of the insurer's capital and surplus. If a

69 group of insurers reports on a consolidated basis as here
70 allowed, the report shall identify the individual insurers
71 that are members of the group.

§33-39-4. Effective date.

1 This article shall take effect on the first day of
2 January, one thousand nine hundred ninety-six.

ARTICLE 40. RISK BASED CAPITAL FOR LIFE AND/OR HEALTH INSURERS.

§33-40-1. Definitions.

1 (a) "Adjusted risk based capital report" means a risk
2 based capital report which has been adjusted by the
3 commissioner in accordance with subsection (c), section
4 two of this article.

5 (b) "Corrective order" means an order issued by the
6 commissioner specifying corrective actions which the
7 commissioner has determined are required.

8 (c) "Domestic insurer" means any life and/or health
9 insurance company organized in this state pursuant to
10 article five of this chapter.

11 (d) "Foreign insurer" means any life and/or health
12 insurance company which is licensed to do business in
13 this state pursuant to article three of this chapter but is
14 not domiciled in this state.

15 (e) "Negative trend" means a negative trend over a
16 period of time, as determined in accordance with the
17 trend test calculation included in the risk based capital
18 instructions defined in subsection (f) of this section.

19 (f) "Risk based capital instructions" means the risk
20 based capital report including risk based capital
21 instructions, as amended and adopted by the national
22 association of insurance commissioners.

23 (g) "Risk based capital level" is an insurer's company
24 action level, regulatory action level, authorized control
25 level or mandatory control level where:

26 (1) "Authorized control level" is the amount calculated
27 by applying the risk based capital formula in accordance
28 with the risk based capital instructions;

29 (2) "Company action level" is the risk based capital
30 amount equal to the product of multiplying the autho-
31 rized control level by two;

32 (3) "Mandatory control level" is the risk based capital
33 amount equal to the product of multiplying the autho-
34 rized control level by seven tenths;

35 (4) "Regulatory action level" is the risk based capital
36 amount equal to the product of multiplying the autho-
37 rized control level by one and one-half.

38 (h) A "risk based capital plan" is a comprehensive
39 financial plan containing the elements specified in
40 subsection (b), section three of this article. If the
41 commissioner rejects the risk based capital plan, and it
42 is revised by the insurer, with or without the commis-
43 sioner's recommendation, the plan shall be called the
44 "revised risk based capital plan".

45 (i) A "risk based capital report" is the report required
46 by section two of this article.

47 (j) "Total adjusted capital" is the sum of:

48 (1) An insurer's statutory capital and surplus; and

49 (2) Such other items, if any, as the risk based capital
50 instructions may provide.

§33-40-2. Risk based capital reports.

1 (a) Every domestic insurer shall annually on or before
2 the first day of March, prepare and file with the
3 commissioner a report of its risk based capital levels for
4 the year ended the thirty-first day of December next
5 preceding. The risk based capital report shall be in a
6 form containing such information as is required by the
7 risk based capital instructions. In addition, every
8 domestic insurer shall file its risk based capital report:

9 (1) With the national association of insurance commis-
10 sioners in accordance with the risk based capital
11 instructions; and

12 (2) With the insurance commissioner of any state in
13 which the insurer is authorized to do business, and that
14 insurance commissioner has notified the insurer of its
15 request in writing. When so requested, the insurer shall
16 file its risk based capital report:

17 (i) Fifteen days from the receipt of notice to file its risk
18 based capital report with that state; or

19 (ii) If the request is received after the thirty-first day
20 of December next preceding but prior to the first day of
21 March, on or before the fifteenth day of March.

22 (b) An insurer's risk based capital shall be determined
23 in accordance with the formula set forth in the risk
24 based capital instructions. The formula shall take into
25 account and may adjust for the covariance between:

26 (1) The risk with respect to the insurer's assets;

27 (2) The risk of adverse insurance experience with
28 respect to the insurer's liabilities and obligations;

29 (3) The interest rate risk with respect to the insurer's
30 business; and

31 (4) All other business risks and such other relevant
32 risks as are set forth in the risk based capital instruc-
33 tions.

34 The above risks shall be determined in each case by
35 applying the factors in the manner set forth in the risk
36 based capital instructions.

37 (c) If a domestic insurer files a risk based capital report
38 which in the judgment of the commissioner is inaccurate,
39 then the commissioner shall adjust the risk based capital
40 report to correct the inaccuracy and shall notify the
41 insurer of the adjustment. The notice shall contain a
42 statement of the reason for the adjustment. A risk based
43 capital report so adjusted is referred to as an "adjusted

44 risk based capital report”.

§33-40-3. Company action level event.

1 (a) A “company action level event” is any of the
2 following events:

3 (1) The filing of a risk based capital report by an
4 insurer which indicates that:

5 (A) The insurer’s total adjusted capital is greater than
6 or equal to its regulatory action level but less than its
7 company action level; or

8 (B) The insurer has total adjusted capital which is
9 greater than or equal to its company action level but less
10 than the product of multiplying its authorized control
11 level by two and one-half and has a negative trend;

12 (2) Notification from the commissioner of an adjusted
13 risk based capital report that indicates the event in
14 paragraph (A) or (B), subdivision (1) of this subsection:
15 *Provided*, That the insurer does not challenge the
16 adjusted risk based capital report pursuant to section
17 seven of this article; or

18 (3) If the insurer challenges an adjusted risk based
19 capital report that indicates the event in paragraph (A)
20 or (B), subdivision (1) of this subsection pursuant to
21 section seven of this article, notification from the
22 commissioner of rejection of the insurer’s challenge.

23 (b) In the event of a company action level event, the
24 insurer shall prepare and file with the commissioner a
25 comprehensive financial plan which shall:

26 (1) Identify the internal conditions of the insurer which
27 contribute to the company action level event;

28 (2) Contain proposals of corrective actions which the
29 insurer intends to take that are expected to result in the
30 elimination of the company action level event;

31 (3) Provide separate projections of the insurer’s
32 financial results in the current year and at least the four

33 succeeding years, one projection prepared giving effect
34 to the proposed corrective actions and one projection not
35 giving effect to the proposed corrective actions. The
36 projections shall include estimates of statutory operating
37 income, net income, capital and/or surplus. The
38 projections for both new and renewal business may
39 include separate projections for each major line of
40 business and separately identify each significant income,
41 expense and benefit component;

42 (4) Identify the key assumptions impacting the in-
43 surer's projections and the sensitivity of the projections
44 to the assumptions; and

45 (5) Identify the quality of, and problems associated
46 with, the insurer's business, including, but not limited to,
47 its assets, anticipated business growth and associated
48 surplus strain, extraordinary exposure to risk, mix of
49 business and use of reinsurance in each case, if any.

50 (c) The risk based capital plan shall be filed:

51 (1) Within forty-five days of the company action level
52 event; or

53 (2) If the insurer challenges an adjusted risk based
54 capital report pursuant to section seven of this article,
55 within forty-five days after notification to the insurer
56 that the commissioner has, after a hearing, rejected the
57 insurer's challenge.

58 (d) Within sixty days after the filing of a risk based
59 capital plan, the commissioner shall notify the insurer
60 whether the risk based capital plan shall be implemented
61 or that it is unsatisfactory. If the commissioner deter-
62 mines the risk based capital plan is unsatisfactory, the
63 notification to the insurer shall set forth the reasons for
64 the determination and may set forth proposed revisions
65 which will render the risk based capital plan satisfac-
66 tory. Upon notification from the commissioner, the
67 insurer shall prepare a revised risk based capital plan,
68 which may incorporate by reference any revisions
69 proposed by the commissioner. The revised risk based

70 capital plan shall be filed with the commissioner:

71 (1) Within forty-five days after the notification from
72 the commissioner; or

73 (2) If the insurer challenges the notification from the
74 commissioner pursuant to section seven of this article,
75 within forty-five days after a notification to the insurer
76 that the commissioner has, after a hearing, rejected the
77 insurer's challenge.

78 (e) In the event of a notification by the commissioner to
79 an insurer that the insurer's risk based capital plan or
80 revised risk based capital plan is unsatisfactory, the
81 commissioner may specify in the notification that the
82 notification constitutes a regulatory action level event.
83 Such notification is subject to the insurer's right to a
84 hearing pursuant to section seven of this article.

85 (f) Every domestic insurer that files a risk based
86 capital plan or revised risk based capital plan with the
87 commissioner shall file a copy of the risk based capital
88 plan or revised risk based capital plan with the insur-
89 ance commissioner of any state in which the insurer is
90 authorized to do business if:

91 (1) Such state has a risk based capital provision
92 substantially similar to the provision of subsection (a),
93 section eight of this article; and

94 (2) The insurance commissioner of that state has
95 notified the insurer of its request for the filing in
96 writing. The insurer shall file a copy of the risk based
97 capital plan or revised risk based capital plan in that
98 state on or before the later of:

99 (A) Fifteen days after the receipt of notice to file a copy
100 of its risk based capital plan or revised risk based capital
101 plan with that state; or

102 (B) The date of which the risk based capital plan or
103 revised risk based capital plan is filed under subsection
104 (c), section four of this article.

§33-40-4. Regulatory action level event.

1 (a) A “regulatory action level event”, with respect to
2 any insurer, is any of the following events:

3 (1) The filing of a risk based capital report by the
4 insurer which indicates that the insurer’s total adjusted
5 capital is greater than or equal to its authorized control
6 level but less than its regulatory action level;

7 (2) Notification from the commissioner of an adjusted
8 risk based capital report that indicates the event in
9 subdivision (1) of this subsection: *Provided*, That the
10 insurer does not challenge the adjusted risk based
11 capital report pursuant to section seven of this article;

12 (3) If the insurer challenges an adjusted risk based
13 capital report that indicates the event in subdivision (1)
14 of this subsection pursuant to section seven of this
15 article, notification from the commissioner that the
16 commissioner has, after a hearing, rejected the insurer’s
17 challenge;

18 (4) The failure of the insurer to file a risk based capital
19 report by the filing date, unless the insurer has provided
20 an explanation for such failure which is satisfactory to
21 the commissioner and has cured the failure within ten
22 days after the filing date;

23 (5) The failure of the insurer to file a risk based capital
24 plan with the commissioner within the time period set
25 forth in subsection (c), section three of this article;

26 (6) Notification from the commissioner that:

27 (A) The risk based capital plan or revised risk based
28 capital plan filed by the insurer is unsatisfactory; and

29 (B) Such notification constitutes a regulatory action
30 level event with respect to the insurer: *Provided*, That
31 the insurer has not challenged the determination
32 pursuant to section seven of this article;

33 (7) If the insurer challenges a determination by the
34 commissioner under subdivision (6) of this subsection

35 pursuant to section seven of this article, notification
36 from the commissioner that the commissioner has, after
37 a hearing, rejected the insurer's challenge;

38 (8) Notification from the commissioner that the insurer
39 has failed to adhere to its risk based capital plan or
40 revised risk based capital plan. The commissioner must
41 determine that the failure to adhere has a substantial
42 adverse effect or the ability of the insurer to eliminate
43 the regulatory action level event in accordance with its
44 risk based capital plan or revised risk based capital plan
45 and state so in the notification. A determination
46 challenged pursuant to section seven of this article is not
47 a regulatory action level event; or

48 (9) If the insurer challenges a determination by the
49 commissioner under subdivision (8) of this subsection
50 pursuant to section seven of this article, notification
51 from the commissioner that the commissioner has, after
52 a hearing, rejected the insurer's challenge.

53 (b) In the event of a regulatory action level event the
54 commissioner shall:

55 (1) Require the insurer to prepare and file a risk based
56 capital plan or, if applicable, a revised risk based capital
57 plan;

58 (2) Perform such examination or analysis as the
59 commissioner deems necessary of the assets, liabilities
60 and operations of the insurer including a review of its
61 risk based capital plan or revised risk based capital plan;
62 and

63 (3) Subsequent to the examination or analysis, issue an
64 order specifying such corrective actions as the commis-
65 sioner shall determine are required.

66 (c) In determining corrective actions, the commissioner
67 may take into account such factors as are deemed
68 relevant with respect to the insurer based upon the
69 commissioner's examination or analysis of the assets,
70 liabilities and operations of the insurer, including, but

71 not limited to, the results of any sensitivity tests
72 undertaken pursuant to the risk based capital instruc-
73 tions. The risk based capital plan or revised risk based
74 capital plan shall be filed:

75 (1) Within forty-five days after the occurrence of the
76 regulatory action level event;

77 (2) If the insurer challenges an adjusted risk based
78 capital report pursuant to section seven of this article
79 and the challenge is not in the judgment of the commis-
80 sioner frivolous, within forty-five days after the
81 notification from the commissioner that the commis-
82 sioner has, after a hearing, rejected the insurer's
83 challenge; or

84 (3) If the insurer challenges a revised risk based capital
85 plan pursuant to section seven of this article, within
86 forty-five days after notification from the commissioner
87 that the commissioner has, after a hearing, rejected the
88 insurer's challenge.

89 (d) The commissioner may retain actuaries and
90 investment experts and other consultants as may be
91 necessary in the judgment of the commissioner to review
92 the insurer's risk based capital plan or revised risk based
93 capital plan, examine or analyze the assets, liabilities
94 and operations of the insurer and formulate the
95 corrective order with respect to the insurer. The fees,
96 costs and expenses relating to consultants shall be borne
97 by the insurer or such other party as directed by the
98 commissioner.

§33-40-5. Authorized control level event.

1 (a) An "authorized control level event" is any of the
2 following events:

3 (1) The filing of a risk based capital report by the
4 insurer which indicates that the insurer's total adjusted
5 capital is greater than or equal to its mandatory control
6 level but less than its authorized control level;

7 (2) Notification from the commissioner of an adjusted

8 risk based capital report that indicates the event in
9 subdivision (1) of this subsection: *Provided*, That the
10 insurer does not challenge the adjusted risk based
11 capital report pursuant to section seven of this article;

12 (3) If the insurer challenges an adjusted risk based
13 capital report that indicates the event in subdivision (1)
14 of this subsection pursuant to section seven of this
15 article, notification from the commissioner that the
16 commissioner has, after a hearing, rejected the insurer's
17 challenge;

18 (4) The failure of the insurer to respond, in a manner
19 satisfactory to the commissioner, to a corrective order:
20 *Provided*, That the insurer has not challenged the
21 corrective order pursuant to section seven of this article;
22 or

23 (5) If the insurer has challenged a corrective order
24 pursuant to section seven of this article and the
25 commissioner has, after a hearing, rejected the insurer's
26 challenge or modified the corrective order, the failure of
27 the insurer to respond, in a manner satisfactory to the
28 commissioner, to the corrective order subsequent to
29 rejection or modification by the commissioner.

30 (b) In the event of an authorized control level event
31 with respect to an insurer, the commissioner shall:

32 (1) Take such actions as are required by subsection (b),
33 section four of this article when a regulatory action level
34 event has occurred; or

35 (2) If the commissioner deems it to be in the best
36 interests of the policyholders and creditors of the insurer
37 and of the public, take such actions as are necessary to
38 cause the insurer to be placed under regulatory control
39 pursuant to article ten of this chapter. In the event the
40 commissioner takes such actions, the authorized control
41 level event shall be deemed sufficient grounds for the
42 commissioner to take action pursuant to said article, and
43 the commissioner shall have the rights, powers and
44 duties with respect to the insurer as are set forth in said

45 article. In the event the commissioner takes actions
46 under this subdivision pursuant to an adjusted risk
47 based capital report, the insurer shall be entitled to such
48 protections as are afforded to insurers pursuant to the
49 provisions of article ten of this chapter pertaining to
50 summary proceedings.

§33-40-6. Mandatory control level event.

1 (a) A “mandatory control level event” is any of the
2 following events:

3 (1) The filing of a risk based capital report which
4 indicates that the insurer’s total adjusted capital is less
5 than its mandatory control level;

6 (2) Notification from the commissioner of an adjusted
7 risk based capital report that indicates the event in
8 subdivision (1) of this subsection: *Provided*, That the
9 insurer does not challenge the adjusted risk based
10 capital report pursuant to section seven of this article; or

11 (3) If the insurer challenges an adjusted risk based
12 capital report that indicates the event in subdivision (1)
13 of this subsection pursuant to section seven of this
14 article, notification from the commissioner that the
15 commissioner has, after a hearing, rejected the insurer’s
16 challenge.

17 (b) In the event of a mandatory control level event, the
18 commissioner shall take actions as are necessary to cause
19 the insurer to be placed under regulatory control
20 pursuant to article ten of this chapter. In that event, the
21 mandatory control level event shall be deemed sufficient
22 grounds for the commissioner to take action pursuant to
23 said article, and the commissioner shall have the rights,
24 powers and duties with respect to the insurer as are set
25 forth in said article. In the event the commissioner takes
26 actions pursuant to an adjusted risk based capital report,
27 the insurer shall be entitled to such protections as are
28 afforded to insurers pursuant to the provisions of said
29 article pertaining to summary proceedings. Notwith-
30 standing any of the foregoing, the commissioner may

31 forego action for up to ninety days after the mandatory
32 control level event if he or she finds there is a reasonable
33 expectation that the mandatory control level event may
34 be eliminated within the ninety day period.

§33-40-7. Hearings.

1 An insurer shall have the right to a departmental
2 hearing, on a record, at which the insurer may challenge
3 any determination or action of the commissioner made
4 pursuant to the provisions of this article. The insurer
5 shall notify the commissioner of its request for a hearing
6 within five days after receiving from the commissioner:

7 (a) Notification of an adjusted risk based capital
8 report; or

9 (b) Notification that:

10 (1) The insurer's risk based capital plan or revised risk
11 based capital plan is unsatisfactory; and

12 (2) Such notification constitutes a regulatory action
13 level event with respect to such insurer; or

14 (c) Notification that the insurer has failed to adhere to
15 its risk based capital plan or revised risk based capital
16 plan and that such failure has a substantial adverse
17 effect on the ability of the insurer to eliminate the
18 company action level event with respect to the insurer in
19 accordance with its risk based capital plan or revised
20 risk based capital plan; or

21 (d) Notification of a corrective order with respect to
22 the insurer.

23 Upon receipt of the insurer's request for a hearing, the
24 commissioner shall set a date for the hearing, no less
25 than fifteen nor more than forty-five days after the date
26 of the insurer's request.

§33-40-8. Confidentiality and prohibition on announcements.

1 (a) All risk based capital reports, to the extent the
2 information therein is not required to be set forth in a

3 publicly available annual statement schedule, and risk
4 based capital plans, including the results or report of any
5 examination or analysis of an insurer performed
6 pursuant hereto and any corrective order issued by the
7 commissioner pursuant to examination or analysis, with
8 respect to any domestic insurer or foreign insurer which
9 are filed with the commissioner constitute information
10 that might be damaging to the insurer if made available
11 to its competitors and therefore shall be kept confiden-
12 tial by the commissioner. This information shall not be
13 made public and/or be subject to subpoena, other than
14 by the commissioner and then only for the purpose of
15 enforcement actions taken by the commissioner pursuant
16 to this article or any other provision of the insurance
17 laws of this state. The information required by this
18 section is specifically exempt from the requirements of
19 chapter twenty-nine-b of this code.

20 (b) It is the judgment of the Legislature that the
21 comparison of an insurer's total adjusted capital to any
22 of its risk based capital levels is a regulatory tool which
23 may indicate the need for possible corrective action with
24 respect to the insurer and is not intended as a means to
25 rank insurers generally. Therefore, except as otherwise
26 required under the provisions of this article, the making,
27 publishing, disseminating, circulating or placing before
28 the public, or causing, directly or indirectly to be made,
29 published, disseminated, circulated or placed before the
30 public, in a newspaper, magazine or other publication, or
31 in the form of a notice, circular, pamphlet, letter or
32 poster, or over any radio or television station, or in any
33 other way, an advertisement, announcement or state-
34 ment containing an assertion, representation or
35 statement with regard to the risk based capital levels of
36 any insurer, or of any component derived in the
37 calculation, by any insurer, agent, broker or other person
38 engaged in any manner in the insurance business would
39 be misleading and is therefore prohibited: *Provided,*
40 That if any materially false statement with respect to the
41 comparison regarding an insurer's total adjusted capital

42 to its risk based capital levels, or any of them, or an
43 inappropriate comparison of any other amount to the
44 insurers' risk based capital levels is published in any
45 written publication and the insurer is able to demon-
46 strate to the commissioner with substantial proof the
47 falsity of such statement, or the inappropriateness, as the
48 case may be, then the insurer may publish an announce-
49 ment in a written publication if the sole purpose of the
50 announcement is to rebut the materially false statement.

§33-40-9. Supplemental provisions.

1 The provisions of this article are supplemental to any
2 other provisions of the laws of this state, and shall not
3 preclude or limit any other powers or duties of the
4 commissioner under such laws, including, but not limited
5 to, article ten of this chapter.

§33-40-10. Foreign insurers.

1 (a) Any licensed foreign insurer shall, upon the written
2 request of the commissioner, file with the commissioner
3 a risk based capital report for the year ending the thirty-
4 first day of December next preceding:

5 (1) Fifteen days from the receipt of notice to file its risk
6 based capital report; or

7 (2) If the request is received after the thirty-first day of
8 December next preceding but prior to the first day of
9 March, on or before the fifteenth day of March.

10 Any licensed foreign insurer shall, at the written
11 request of the commissioner, promptly file with the
12 commissioner a copy of any risk based capital plan that
13 is filed with the insurance commissioner of any other
14 state.

15 (b) The commissioner may require any licensed foreign
16 insurer to file a risk based capital plan in the event of a
17 company action level event, a regulatory action level
18 event or an authorized control level event when:

19 (1) The event is determined pursuant to the risk based

20 capital statute applicable in the insurer's state of
21 domicile or as determined pursuant to the provisions of
22 this article if there is no risk based capital statute in
23 force in that state; and

24 (2) The insurance commissioner of the state of domicile
25 fails to require the insurer to file a risk based capital
26 plan pursuant to the risk based capital statute in force in
27 that state or under the provisions of section three of this
28 article if there is no risk based capital statute in force in
29 that state.

30 In such event, the failure of the licensed foreign insurer
31 to file a risk based capital plan with the commissioner
32 shall be grounds to order the insurer to cease and desist
33 writing new insurance business in this state.

34 (c) In the event of a mandatory control level event with
35 respect to any licensed foreign insurer, if no domiciliary
36 receiver has been appointed with respect to the foreign
37 insurer under the rehabilitation and liquidation statute
38 applicable in the state of domicile of the foreign insurer,
39 the commissioner may make application to the circuit
40 court of Kanawha county permitted pursuant to the
41 provisions of article ten of this chapter with respect to
42 the liquidation of property of foreign insurers found in
43 this state and the occurrence of the mandatory control
44 level event shall be considered adequate grounds for the
45 application.

§33-40-11. Severability clause.

1 If any provision of this article, or the application
2 thereof to any person or circumstances, is held invalid,
3 such determination shall not affect the provisions or
4 applications of this article which can be given effect
5 without the invalid provision or application and to that
6 end the provisions of this article are severable.

§33-40-12. Notices.

1 All notices from the commissioner to an insurer which
2 may result in regulatory action hereunder shall be

3 subject to and deemed effective pursuant to the
4 provision of section twelve, article two of this chapter.

§33-40-13. Effective date.

1 This article shall take effect on the first day of
2 January, one thousand nine hundred ninety-six.

Enr. Com. Sub. for S. B. No. 434] 44

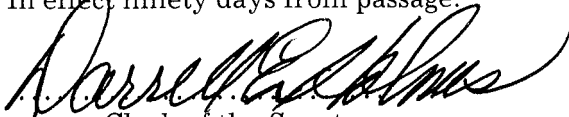
The Joint Committee on Enrolled Bills hereby certifies
that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee



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

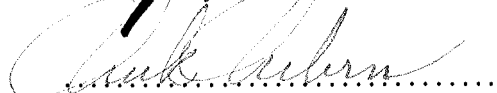
Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

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


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3-30-94

Time 4:33 p.m.