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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE



ENROLLED

SENATE BILL NO. 506

(By Senators Minard and Kessler)



PASSED March 8, 2002

In Effect ninety days from Passage

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(BY SENATORS MINARD AND KESSLER)

[Passed March 8, 2002; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight-a; to amend and reenact section two, article twenty-two of said chapter; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to amend and reenact section twenty-six, article twenty-five-d of said chapter, all relating to the use of clearing corporations and federal reserve book-entry system by domestic insurance companies with respect to invested assets.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eight-a; that section two, article twenty-two of said chapter be amended and reenacted; that section four, article twenty-four of said chapter

be amended and reenacted; that section twenty-four, article twenty-five-a of said chapter be amended and reenacted; and that section twenty-six, article twenty-five-d of said chapter be amended and reenacted, all to read as follows:

ARTICLE 8A. USE OF CLEARING CORPORATIONS AND FEDERAL RESERVE BOOK-ENTRY SYSTEM.

§33-8A-1. Purpose.

1 The purpose of this article is to authorize domestic
2 insurance companies to utilize modern systems for holding
3 and transferring securities without physical delivery of
4 securities certificates, subject to appropriate regulation of
5 the commissioner.

§33-8A-2. Definitions.

1 As used in this article, the term:

2 (a) "Agent" means a national bank, state bank or trust
3 company that maintains an account in its name in a
4 clearing corporation or that is a member of the federal
5 reserve system and through which a custodian participates
6 in a clearing corporation or the federal reserve book-entry
7 system, except that with respect to securities issued by
8 institutions organized or existing under the laws of a
9 foreign country or securities used to meet the deposit
10 requirements pursuant to the laws of a foreign country as
11 a condition of doing business therein, "agent" may include
12 a corporation that is organized or existing under the laws
13 of a foreign country and that is legally qualified under
14 those laws to accept custody of securities.

15 (b) "Clearing corporation" means a corporation as
16 defined in subdivision (5), subsection (a), section one
17 hundred two, article eight, chapter forty-six of this code,
18 except that with respect to securities issued by institutions
19 organized or existing under the laws of any foreign
20 country or securities used to meet the deposit requirements
21 pursuant to the laws of a foreign country as a condition of

22 doing business therein, clearing corporation may include
23 a corporation which is organized or existing under the
24 laws of any foreign country and is legally qualified under
25 such laws to effect the transactions in securities by
26 computerized book entry.

27 (c) "Custodian" means a national bank, state bank or
28 trust company that shall at all times during which it acts
29 as a custodian pursuant to this regulation be no less than
30 adequately capitalized as determined by the standards
31 adopted by United States banking regulators and that is
32 regulated by either state banking laws or is a member of
33 the federal reserve system and that is legally qualified to
34 accept custody of securities in accordance with the stan-
35 dards set forth below, except that with respect to securi-
36 ties issued by institutions organized or existing under the
37 laws of a foreign country, or securities used to meet the
38 deposit requirements pursuant to the laws of a foreign
39 country as a condition of doing business therein, "custo-
40 dian" may include a bank or trust company incorporated
41 or organized under the laws of a country other than the
42 United States that is regulated as such by that country's
43 government or an agency thereof that shall at all times
44 during which it acts as a custodian pursuant to this
45 regulation be no less than adequately capitalized as
46 determined by the standards adopted by international
47 banking authorities and that is legally qualified to accept
48 custody of securities.

49 (d) "Direct participant" means a bank or trust company
50 or other institution which maintains an account in its
51 name in a clearing corporation and through which an
52 insurance company participates in a clearing corporation.

53 (e) "Federal reserve book-entry system" means the
54 computerized systems sponsored by the United States
55 department of the treasury and certain agencies and
56 instrumentalities of the United States for holding and
57 transferring securities of the United States government

58 and such agencies and instrumentalities, respectively, in
59 federal reserve banks, through banks which are members
60 of the federal reserve system or which otherwise have
61 access to such computerized systems.

62 (f) "Member bank" means a national bank, state bank or
63 trust company which is a member of the federal reserve
64 system and through which an insurance company partici-
65 pates in the federal reserve book-entry system.

66 (g) "Securities" means certificated securities as defined
67 in subdivision (4), subsection (a), section one hundred two,
68 article eight, chapter forty-six of this code and uncertifi-
69 cated securities as defined in subdivision (18) of said
70 subsection.

§33-8A-3. Use of book-entry systems.

1 (a) Notwithstanding any other provision of law, a
2 domestic insurance company may deposit or arrange for
3 the deposit of securities held in or purchased for its
4 general account and its separate accounts in a clearing
5 corporation or the federal reserve book-entry system.
6 When securities are deposited with a clearing corporation,
7 certificates representing securities of the same class of the
8 same issuer may be merged and held in bulk in the name
9 of the nominee of the clearing corporation with any other
10 securities deposited with the clearing corporation by any
11 person, regardless of the ownership of the securities, and
12 certificates representing securities of small denominations
13 may be merged into one or more certificates of larger
14 denominations. The records of a member bank through
15 which an insurance company holds securities in the federal
16 reserve book-entry system and the records of any custo-
17 dian banks through which an insurance company holds
18 securities in a clearing corporation shall at all times show
19 that the securities are held for the insurance company and
20 for which accounts. Ownership of, and other interests in,
21 the securities may be transferred by bookkeeping entry on

22 the books of such clearing corporation or in the federal
23 reserve book-entry system without, in either case, physical
24 delivery of certificates representing the securities.

25 (b) The insurance commissioner is authorized to promul-
26 gate rules and regulations governing the deposit by
27 insurance companies of securities with clearing corpora-
28 tions and in the federal reserve book-entry system.

**§33-8A-4. Deposit of securities by domestic insurance compa-
nies.**

1 Notwithstanding any other provision of law, the securi-
2 ties qualified for deposit under this section may be depos-
3 ited with a clearing corporation or held in the Federal
4 Reserve book-entry system. Securities deposited with a
5 clearing corporation or held in the federal reserve book-
6 entry system and used to meet the deposit requirements set
7 forth in this section shall be under the control of the
8 commissioner and may not be withdrawn by the insurance
9 company without the approval of the commissioner. An
10 insurance company holding securities in this manner shall
11 provide to the commissioner evidence issued by its custo-
12 dian or member bank through which the insurance com-
13 pany has deposited the securities in a clearing corporation
14 or through which the securities are held in the federal
15 reserve book-entry system, respectively, in order to
16 establish that the securities are actually recorded in an
17 account in the name of the custodian or other direct
18 participant or member bank and that the records of the
19 custodian, other participant or member bank reflect that
20 the securities are held subject to the order of the commis-
21 sioner.

§33-8A-5. Deposit of securities by foreign insurance companies.

1 Notwithstanding any other provision of law, securities
2 eligible for deposit under the insurance law of this state
3 relating to deposit of securities by an insurance company

4 as a condition of commencing or continuing to do an
5 insurance business in this state may be deposited with a
6 clearing corporation or held in the federal reserve book-
7 entry system. Securities deposited with a clearing corpo-
8 ration or held in the federal reserve book-entry system and
9 used to meet the deposit requirements under the insurance
10 laws of this state shall be under the control of the commis-
11 sioner and shall not be withdrawn by the insurance
12 company without the approval of the commissioner. An
13 insurance company holding securities in this manner shall
14 provide to the commissioner evidence issued by its custo-
15 dian or a member bank through which the insurance
16 company has deposited securities with a clearing corpora-
17 tion or held in the federal reserve book-entry system,
18 respectively, in order to establish that the securities are
19 actually recorded in an account in the name of the custo-
20 dian or other direct participant or member bank and
21 evidence that the records of the custodian, other partici-
22 pant or member bank reflect that the securities are held
23 subject to the order of the commissioner.

§33-8A-6. Custody agreements; requirements.

1 (a) An insurance company may, by written agreement
2 with a custodian, provide for the custody of its securities
3 with a custodian. The securities may be held by the
4 custodian or its agent or in a clearing corporation or in the
5 federal reserve book-entry system. Securities so held,
6 whether held by the custodian or its agent or in a clearing
7 corporation or in the federal reserve book-entry system,
8 are referred to herein as "custodied securities".

9 (b) The agreement shall be in writing and shall be
10 authorized by a resolution of the board of directors of the
11 insurance company or of an authorized committee of the
12 board. The terms of the agreement shall comply with the
13 following:

14 (1) Certificated securities held by the custodian shall be
15 held either separate from the securities of the custodian
16 and of all of its other customers or in a fungible bulk of
17 securities as part of a filing of securities by issue (FOSBI)
18 arrangement.

19 (2) Securities held in a fungible bulk by the custodian
20 and securities in a clearing corporation or in the federal
21 reserve book-entry system shall be separately identified on
22 the custodian's official records as being owned by the
23 insurance company. The records shall identify which
24 custodied securities are held by the custodian or by its
25 agent and which securities are in a clearing corporation or
26 in the federal reserve book-entry system. If the securities
27 are in a clearing corporation or in the federal reserve
28 book-entry system, the records shall also identify where
29 the securities are and if in a clearing corporation, the name
30 of the clearing corporation and, if through an agent, the
31 name of the agent.

32 (3) All custodied securities that are registered shall be
33 registered in the name of the company or in the name of a
34 nominee of the company or in the name of the custodian or
35 its nominee or, if in a clearing corporation, in the name of
36 the clearing corporation or its nominee.

37 (4) Custodied securities shall be held subject to the
38 instructions of the insurance company and shall be
39 withdrawable upon the demand of the insurance company,
40 except that custodied securities used to meet the deposit
41 requirements set forth in section six, article three of this
42 chapter shall, to the extent required by said section, be
43 under the control of the state treasurer and shall not be
44 withdrawn by the insurance company without the ap-
45 proval of the insurance commissioner.

46 (5) The custodian shall be required to send or cause to be
47 sent to the insurance company a confirmation of all
48 transfers of custodied securities to or from the account of
49 the insurance company. In addition, the custodian shall be

50 required to furnish no less than monthly the insurance
51 company with reports of holdings of custodied securities
52 at times and containing information reasonably requested
53 by the insurance company. The custodian's trust commit-
54 tee's annual reports of its review of the insurer's trust
55 accounts shall also be provided to the insurer. Reports and
56 verifications may be transmitted in electronic or paper
57 form.

58 (6) During the course of the custodian's regular business
59 hours, an officer or employee of the insurance company, an
60 independent accountant selected by the insurance com-
61 pany and a representative of an appropriate regulatory
62 body shall be entitled to examine, on the premises of the
63 custodian, the custodian's records relating to custodied
64 securities, but only upon furnishing the custodian with
65 written instructions to that effect from an appropriate
66 officer of the insurance company.

67 (7) The custodian and its agents shall be required to
68 send to the insurance company:

69 (A) All reports which they receive from a clearing
70 corporation or the federal reserve book-entry system on
71 their respective systems of internal accounting control;
72 and

73 (B) Reports prepared by outside auditors on the custodi-
74 ans or its agent's internal accounting control of custodied
75 securities that the insurance company may reasonably
76 request.

77 (8) The custodian shall maintain records sufficient to
78 determine and verify information relating to custodied
79 securities that may be reported in the insurance company's
80 annual statement and supporting schedules and informa-
81 tion required in an audit of the financial statements of the
82 insurance company.

83 (9) The custodian shall provide, upon written request
84 from an appropriate officer of the insurance company, the

85 appropriate affidavits, substantially in the form attached
86 to this regulation, with respect to custodied securities.

87 (10) The custodian shall secure and maintain insurance
88 protection in an adequate amount covering the custodian's
89 duties and activities as custodian for the insurer's assets
90 and shall state in the custody agreement that protection is
91 in compliance with the requirements of the custodian's
92 banking regulator. The commissioner may determine
93 whether the type of insurance is appropriate and the
94 amount of coverage is adequate.

95 (11) The custodian shall be obligated to indemnify the
96 insurance company for any loss of custodied securities
97 occasioned by the negligence or dishonesty of the custo-
98 dian's officers or employees, or burglary, robbery, holdup,
99 theft or mysterious disappearance, including loss by
100 damage or destruction.

101 (12) In the event that there is a loss of custodied securi-
102 ties for which the custodian shall be obligated to indem-
103 nify the insurance company as provided in subdivision (11)
104 of this subsection, the custodian shall promptly replace the
105 securities or the value thereof and the value of any loss of
106 rights or privileges resulting from the loss of securities.

107 (13) The agreement may provide that the custodian will
108 not be liable for a failure to take an action required under
109 the agreement in the event and to the extent that the
110 taking of the action is prevented or delayed by war
111 (whether declared or not and including existing wars),
112 revolution, insurrection, riot, civil commotion, act of God,
113 accident, fire, explosion, stoppage of labor, strikes or other
114 differences with employees, laws, regulations, orders or
115 other acts of any governmental authority, or any other
116 cause whatever beyond its reasonable control.

117 (14) In the event that the custodian gains entry in a
118 clearing corporation or in the federal reserve book-entry
119 system through an agent, there shall be an agreement

120 between the custodian and the agent under which the
121 agent shall be subject to the same liability for loss of
122 custodied securities as the custodian. However, if the
123 agent shall be subject to regulation under the laws of a
124 jurisdiction that is different from the jurisdiction the laws
125 of which regulate the custodian, the insurance commis-
126 sioner of the state of domicile of the insurance company
127 may accept a standard of liability applicable to the agent
128 that is different from the standard of liability applicable
129 to the custodian.

130 (15) The custodian shall provide written notification to
131 the insurer's domiciliary commissioner if the custodial
132 agreement with the insurer has been terminated or if one
133 hundred percent of the account assets in any one custody
134 account have been withdrawn. This notification shall be
135 remitted to the insurance commissioner within three
136 business days of the receipt by the custodian of the in-
137 surer's written notice of termination or within three
138 business days of the withdrawal of one hundred percent of
139 the account assets.

§33-8A-7. Deposit with affiliates; requirements.

1 (a) Nothing in this regulation shall prevent an insurance
2 company from depositing securities with another insur-
3 ance company with which the depositing insurance
4 company is affiliated, provided that the securities are
5 deposited pursuant to a written agreement authorized by
6 the board of directors of the depositing insurance company
7 or an authorized committee thereof and that the receiving
8 insurance company is organized under the laws of one of
9 the states of the United States of America or of the
10 District of Columbia. If the respective states of domicile
11 of the depositing and receiving insurance companies are
12 not the same, the depositing insurance company shall have
13 given notice of the deposit to the insurance commissioner
14 in the state of its domicile and the insurance commissioner
15 shall not have objected to it within thirty days of the
16 receipt of the notice.

17 (b) The terms of the agreement shall comply with the
18 following:

19 (1) The insurance company receiving the deposit shall
20 maintain records adequate to identify and verify the
21 securities belonging to the depositing insurance company.

22 (2) The receiving insurance company shall allow repre-
23 sentatives of an appropriate regulatory body to examine
24 records relating to securities held subject to the agreement.

25 (3) The depositing insurance company may authorize the
26 receiving insurance company:

27 (A) To hold the securities of the depositing insurance
28 company in bulk, in certificates issued in the name of the
29 receiving insurance company or its nominee, and to
30 commingle them with securities owned by other affiliates
31 of the receiving insurance company; and

32 (B) To provide for the securities to be held by a custo-
33 dian, including the custodian of securities of the receiving
34 insurance company or in a clearing corporation or the
35 federal reserve book-entry system.

§33-8A-8. Effective date.

1 This article shall become effective on the first day of
2 July, two thousand two.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

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

1 Each company to the same extent that provisions are
2 applicable to domestic mutual insurers shall be governed
3 by and be subject to the following articles of this chapter:
4 Article one (definitions); article two (insurance commis-
5 sioner); article four (general provisions) except that section
6 sixteen of said article may not be applicable thereto;
7 article seven (assets and liabilities); article eight-a (use of
8 clearing corporations and federal reserve book-entry
9 system); article ten (rehabilitation and liquidation) except

10 that under the provisions of section thirty-two of said
11 article assessments may not be levied against any former
12 member of a farmers' mutual fire insurance company who
13 is no longer a member of the company at the time the order
14 to show cause was issued; article eleven (unfair trade
15 practices); article twelve (agents, brokers and solicitors)
16 except that the agent's license fee shall be five dollars;
17 article twenty-six (West Virginia insurance guaranty
18 association act); article twenty-seven (insurance holding
19 company systems); article thirty (mine subsidence insur-
20 ance) except that under the provisions of section six of
21 said article, a farmers' mutual insurance company shall
22 have the option of offering mine subsidence coverage to all
23 of its policyholders but may not be required to do so;
24 article thirty-three (annual audited financial report);
25 article thirty-four (administrative supervision); article
26 thirty-four-a (standards and commissioner's authority for
27 companies considered to be in hazardous financial condi-
28 tion); article thirty-five (criminal sanctions for failure to
29 report impairment); article thirty-six (business transacted
30 with producer-controlled property-casualty insurer);
31 article thirty-seven (managing general agents); article
32 thirty-nine (disclosure of material transactions); article
33 forty (risk-based capital for insurers); and article forty-one
34 (privileges and immunity); but only to the extent these
35 provisions are not inconsistent with the provisions of this
36 article.

**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 provi-
5 sions are applicable to insurers transacting similar kinds
6 of insurance and not inconsistent with the provisions of

7 this article, shall be governed by and be subject to the
8 provisions as herein below indicated, of the following
9 articles of this chapter: Article two (insurance commis-
10 sioner), except that, under section nine of said article,
11 examinations shall be conducted at least once every four
12 years; article four (general provisions), except that section
13 sixteen of said article may not be applicable thereto;
14 section twenty, article five (borrowing by insurers); section
15 thirty-four, article six (fee for form and rate filing); article
16 six-c (guaranteed loss ratio); article seven (assets and
17 liabilities); article eight-a (use of clearing corporations and
18 federal reserve book-entry system); article eleven (unfair
19 trade practices); article twelve (agents, brokers and
20 solicitors), except that the agent's license fee shall be
21 twenty-five dollars; section two-a, article fifteen (defini-
22 tions); section two-b, article fifteen (guaranteed issue);
23 section two-d, article fifteen (exception to guaranteed
24 renewability); section two-e, article fifteen (discontinua-
25 tion of coverage); section two-f, article fifteen (certifica-
26 tion of creditable coverage); section two-g, article fifteen
27 (applicability); section four-e, article fifteen (benefits for
28 mothers and newborns); section fourteen, article fifteen
29 (individual accident and sickness insurance); section
30 sixteen, article fifteen (coverage of children); section
31 eighteen, article fifteen (equal treatment of state agency);
32 section nineteen, article fifteen (coordination of benefits
33 with medicaid); article fifteen-a (long-term care insur-
34 ance); article fifteen-c (diabetes insurance); section three,
35 article sixteen (required policy provisions); section three-a,
36 article sixteen (mental health); section three-c, article
37 sixteen (group accident and sickness insurance); section
38 three-d, article sixteen (medicare supplement insurance);
39 section three-f, article sixteen (treatment of
40 temporomandibular joint disorder and craniomandibular
41 disorder); section three-j, article sixteen (benefits for
42 mothers and newborns); section three-k, article sixteen
43 (preexisting condition exclusions); section three-l, article
44 sixteen (guaranteed renewability); section three-m, article

45 sixteen (creditable coverage); section three-n, article
46 sixteen (eligibility for enrollment); section eleven, article
47 sixteen (coverage of children); section thirteen, article
48 sixteen (equal treatment of state agency); section fourteen,
49 article sixteen (coordination of benefits with medicaid);
50 section sixteen, article sixteen (diabetes insurance); article
51 sixteen-a (group health insurance conversion); article
52 sixteen-c (small employer group policies); article sixteen-d
53 (marketing and rate practices for small employers); article
54 twenty-six-a (West Virginia life and health insurance
55 guaranty association act), after the first day of October,
56 one thousand nine hundred ninety-one; article
57 twenty-seven (insurance holding company systems); article
58 twenty-eight (individual accident and sickness insurance
59 minimum standards); article thirty-three (annual audited
60 financial report); article thirty-four (administrative
61 supervision); article thirty-four-a (standards and commis-
62 sioner's authority for companies considered to be in
63 hazardous financial condition); article thirty-five (criminal
64 sanctions for failure to report impairment); article
65 thirty-seven (managing general agents); and article
66 forty-one (privileges and immunity) and no other provision
67 of this chapter may apply to these corporations unless
68 specifically made applicable by the provisions of this
69 article. If, however, the corporation is converted into a
70 corporation organized for a pecuniary profit or if it
71 transacts business without having obtained a license as
72 required by section five of this article, it shall thereupon
73 forfeit its right to these exemptions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Scope of provisions; applicability of other laws.

1 (a) Except as otherwise provided in this article, provi-
2 sions of the insurance laws and provisions of hospital or
3 medical service corporation laws are not applicable to any
4 health maintenance organization granted a certificate of
5 authority under this article. The provisions of this article
6 shall not apply to an insurer or hospital or medical service

7 corporation licensed and regulated pursuant to the insur-
8 ance laws or the hospital or medical service corporation
9 laws of this state except with respect to its health mainte-
10 nance corporation activities authorized and regulated
11 pursuant to this article. The provisions of this article may
12 not apply to an entity properly licensed by a reciprocal
13 state to provide health care services to employer groups,
14 where residents of West Virginia are members of an
15 employer group, and the employer group contract is
16 entered into in the reciprocal state. For purposes of this
17 subsection, a "reciprocal state" means a state which
18 physically borders West Virginia and which has subscriber
19 or enrollee hold harmless requirements substantially
20 similar to those set out in section seven-a of this article.

21 (b) Factually accurate advertising or solicitation regard-
22 ing the range of services provided, the premiums and
23 copayments charged, the sites of services and hours of
24 operation and any other quantifiable, nonprofessional
25 aspects of its operation by a health maintenance organiza-
26 tion granted a certificate of authority, or its representative
27 may not be construed to violate any provision of law
28 relating to solicitation or advertising by health profes-
29 sions: *Provided*, That nothing contained in this subsection
30 shall be construed as authorizing any solicitation or
31 advertising which identifies or refers to any individual
32 provider or makes any qualitative judgment concerning
33 any provider.

34 (c) Any health maintenance organization authorized
35 under this article may not be considered to be practicing
36 medicine and is exempt from the provisions of chapter
37 thirty of this code, relating to the practice of medicine.

38 (d) The provisions of sections fifteen and twenty, article
39 four (general provisions); section seventeen, article six
40 (noncomplying forms); section twenty, article five (bor-
41 rowing by insurers); article six-c (guaranteed loss ratio);
42 article seven (assets and liabilities); article eight (invest-
43 ments); article eight-a (use of clearing corporations and

44 federal reserve book-entry system); article nine (adminis-
45 tration of deposits); article twelve (agents, brokers,
46 solicitors and excess line); section fourteen, article fifteen
47 (individual accident and sickness insurance); section
48 sixteen, article fifteen (coverage of children); section
49 eighteen, article fifteen (equal treatment of state agency);
50 section nineteen, article fifteen (coordination of benefits
51 with medicaid); article fifteen-b (uniform health care
52 administration act); section three, article sixteen (required
53 policy provisions); section three-f, article sixteen (treat-
54 ment of temporomandibular disorder and
55 craniomandibular disorder); section eleven, article sixteen
56 (coverage of children); section thirteen, article sixteen
57 (equal treatment of state agency); section fourteen, article
58 sixteen (coordination of benefits with medicaid); article
59 sixteen-a (group health insurance conversion); article
60 sixteen-d (marketing and rate practices for small employ-
61 ers); article twenty-five-c (health maintenance organiza-
62 tion patient bill of rights); article twenty-seven (insurance
63 holding company systems); article thirty-four-a (standards
64 and commissioner's authority for companies considered to
65 be in hazardous financial condition); article thirty-five
66 (criminal sanctions for failure to report impairment);
67 article thirty-seven (managing general agents); article
68 thirty-nine (disclosure of material transactions); article
69 forty-one (privileges and immunity); and article forty-two
70 (women's access to health care) shall be applicable to any
71 health maintenance organization granted a certificate of
72 authority under this article. In circumstances where the
73 code provisions made applicable to health maintenance
74 organizations by this section refer to the "insurer", the
75 "corporation" or words of similar import, the language
76 shall be construed to include health maintenance organi-
77 zations.

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

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION.**§33-25D-26. Scope of provisions; applicability of other laws.**

1 (a) Except as otherwise provided in this article, provi-
2 sions of the insurance laws, provisions of hospital, medi-
3 cal, dental or health service corporation laws and provi-
4 sions of health maintenance organization laws are not
5 applicable to any prepaid limited health service organiza-
6 tion granted a certificate of authority under this article.
7 The provisions of this article do not apply to an insurer,
8 hospital, medical, dental or health service corporation, or
9 health maintenance organization licensed and regulated
10 pursuant to the insurance laws, hospital, medical, dental
11 or health service corporation laws or health maintenance
12 organization laws of this state except with respect to its
13 prepaid limited health service corporation activities
14 authorized and regulated pursuant to this article. The
15 provisions of this article do not apply to an entity properly
16 licensed by a reciprocal state to provide a limited health
17 care service to employer groups, where residents of West
18 Virginia are members of an employer group, and the
19 employer group contract is entered into in the reciprocal
20 state. For purposes of this subsection, a "reciprocal state"
21 means a state which physically borders West Virginia and
22 which has subscriber or enrollee hold harmless require-
23 ments substantially similar to those set out in section ten
24 of this article.

25 (b) Factually accurate advertising or solicitation regard-
26 ing the range of services provided, the premiums and
27 copayments charged, the sites of services and hours of
28 operation and any other quantifiable, nonprofessional
29 aspects of its operation by a prepaid limited health service
30 organization granted a certificate of authority, or its
31 representative do not violate any provision of law relating
32 to solicitation or advertising by health professions:
33 *Provided*, That nothing contained in this subsection
34 authorizes any solicitation or advertising which identifies

35 or refers to any individual provider or makes any qualita-
36 tive judgment concerning any provider.

37 (c) Any prepaid limited health service organization
38 authorized under this article is not considered to be
39 practicing medicine and is exempt from the provision of
40 chapter thirty of this code relating to the practice of
41 medicine.

42 (d) The provisions of section nine, article two, examina-
43 tions; section thirteen, article two, hearings; sections
44 fifteen and twenty, article four, general provisions; section
45 twenty, article five, borrowing by insurers; section seven-
46 teen, article six, noncomplying forms; article six-c, guar-
47 anteed loss ratio; article seven, assets and liabilities;
48 article eight, investments; article eight-a, use of clearing
49 corporations and federal reserve book-entry system; article
50 nine, administration of deposits; article ten, rehabilitation
51 and liquidation; article twelve, agents, brokers, solicitors
52 and excess line; section fourteen, article fifteen, individual
53 accident and sickness insurance; section sixteen, article
54 fifteen, coverage of children; section eighteen, article
55 fifteen, equal treatment of state agency; section nineteen,
56 article fifteen, coordination of benefits with medicaid;
57 article fifteen-b, uniform health care administration act;
58 section three, article sixteen, required policy provisions;
59 section eleven, article sixteen, coverage of children; section
60 thirteen, article sixteen, equal treatment of state agency;
61 section fourteen, article sixteen, coordination of benefits
62 with medicaid; article sixteen-a, group health insurance
63 conversion; article sixteen-d, marketing and rate practices
64 for small employers; article twenty-seven, insurance
65 holding company systems; article thirty-three, annual
66 audited financial report; article thirty-four, administrative
67 supervision; article thirty-four-a, standards and commis-
68 sioner's authority for companies considered to be in
69 hazardous financial condition; article thirty-five, criminal
70 sanctions for failure to report impairment; article
71 thirty-seven, managing general agents; article thirty-nine,

72 disclosure of material transactions; and article forty-one,
73 privileges and immunity, all of this chapter are applicable
74 to any prepaid limited health service organization granted
75 a certificate of authority under this article. In circum-
76 stances where the code provisions made applicable to
77 prepaid limited health service organizations by this section
78 refer to the "insurer", the "corporation" or words of
79 similar import, the language includes prepaid limited
80 health service organizations.

81 (e) Any long-term care insurance policy delivered or
82 issued for delivery in this state by a prepaid limited health
83 service organization shall comply with the provisions of
84 article fifteen-a of this chapter.

85 (f) A prepaid limited health service organization granted
86 a certificate of authority under this article is exempt from
87 paying municipal business and occupation taxes on gross
88 income it receives from its enrollees, or from their employ-
89 ers or others on their behalf, for health care items or
90 services provided directly or indirectly by the prepaid
91 limited health service organization.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is* approved this the *3rd*
Day of *April*, 2002.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/26/02

Time

3:10pm