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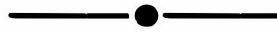
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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2009



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2757**

(By Delegates Perry, Shook, Ashley, Schoen, Moore,  
Manchin, Miley, Skaff, Reynolds and Frazier)



Passed April 8, 2009

In Effect Ninety Days from Passage

**E N R O L L E D**

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**OFFICE WEST VIRGINIA  
SECRETARY OF STATE**

**H. B. 2757**

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**(BY DELEGATES PERRY, SHOOK, ASHLEY, SCHOEN, MOORE,  
MANCHIN, MILEY, SKAFF, REYNOLDS AND FRAZIER)**

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**[Passed April 8, 2009; in effect ninety days from passage.]**

**AN ACT to amend and reenact §33-33-1, §33-33-2, §33-33-3, §33-33-4, §33-33-5, §33-33-6, §33-33-8, §33-33-9, §33-33-10, §33-33-10a, §33-33-11, §33-33-12, §33-33-13, §33-33-14 and §33-33-15 of the Code of the West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-33-16, all relating to financial audits of insurers; defining terms; providing general requirements for filing annual audited financial reports; providing for creation of audit committee; requiring financial reports to include certain items; requiring the designation of an independent certified public accountant by insurers; providing requirements for the independent certified public accountants; prohibiting use of indemnification agreements by independent certified public accountants performing certain audits; permitting mediation or arbitration agreements in certain circumstances; requiring audit to be performed in accordance with generally accepted auditing**

standards; requiring independent certified public accountants to report adverse financial condition of insurers; requiring independent certified public accountants to report material weaknesses regarding internal control of insurers; requiring independent certified public accountants to provide letter of qualifications; requiring that workpapers of independent certified public accountants be available for review by Insurance Commissioner; providing for requirements of audit committee; requiring certain conduct of insurer regarding preparation of reports and documents; providing requirements for conducting financial audits of Canadian and British insurers; requiring report from insurers regarding internal control over financial reporting; providing exemptions; and providing effective dates of provisions.

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

That §33-33-1, §33-33-2, §33-33-3, §33-33-4, §33-33-5, §33-33-6, §33-33-8, §33-33-9, §33-33-10, §33-33-10a, §33-33-11, §33-33-12, §33-33-13, §33-33-14 and §33-33-15 of the Code of West Virginia, 1931, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-33-16, all to read as follows:

**ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.**

**§33-33-1. Declaration of policy and purpose.**

1 (a) The purpose of this article is to improve the Insurance  
2 Commissioner's surveillance of the financial condition of  
3 insurers by requiring:

4 (1) An annual audit of financial statements reporting the  
5 financial position and the results of operations of insurers by  
6 independent certified public accountants;

7 (2) Communication of internal control related matters  
8 noted in an audit; and

9 (3) Management's report of internal control over  
10 financial reporting.

11 (b) Every insurer, as defined in subdivision (7), section  
12 two of this article, shall be subject to this article. Insurers  
13 having direct premiums written in this state of less than \$1  
14 million in any calendar year and less than one thousand  
15 policyholders or certificate holders of directly written  
16 policies nationwide at the end of the calendar year shall be  
17 exempt from this article for the year, unless the commissioner  
18 makes a specific finding that compliance is necessary for the  
19 commissioner to carry out statutory responsibilities.  
20 However, insurers having assumed premiums pursuant to  
21 contracts and/or treaties of reinsurance of \$1 million or more  
22 will not be so exempt.

23 (c) Foreign or alien insurers filing audited financial  
24 reports in another state, pursuant to the other state's  
25 requirement for filing of audited financial reports which has  
26 been found by the commissioner to be substantially similar  
27 to the requirements herein, are exempt from sections three  
28 through eleven of this article if:

29 (1) A copy of the audited financial report, communication  
30 of internal control-related matters noted in an audit, report on  
31 significant deficiencies in internal controls and the  
32 accountant's letter of qualifications which are filed with the  
33 other state are filed with the commissioner in accordance  
34 with the filing dates specified in sections three, ten and ten-a  
35 of this article, respectively. Canadian insurers may submit  
36 accountants' reports as filed with the Office of the  
37 Superintendent of Financial Institutions, Canada.

38 (2) A copy of any notification of adverse financial  
39 condition report filed with the other state is filed with the  
40 commissioner within the time specified in section nine of this  
41 article.

42 (d) Foreign or alien insurers required to file  
43 Management's Report of Internal Control over Financial  
44 Reporting in another state are exempt from filing the  
45 report in this state provided the other state has  
46 substantially similar reporting requirements and the  
47 report is filed with the commissioner of the other state  
48 within the time specified.

49 (e) This article shall not prohibit or preclude or in any  
50 way limit the commissioner from performing examinations  
51 of insurers as specified in section nine, article two of this  
52 chapter or any other examinations as the commissioner may  
53 be authorized by this chapter to perform.

**§33-33-2. Definitions.**

1 As used in this article:

2 (1) "Accountant" or "independent certified public  
3 accountant" means an independent certified public  
4 accountant or accounting firm in good standing with the  
5 American Institute of Certified Public Accountants and in all  
6 states in which the accountant is licensed to practice; for  
7 Canadian and British companies, the terms mean a Canadian-  
8 chartered or British-chartered accountant.

9 (2) An "affiliate" of, or person "affiliated" with a specific  
10 person, is a person that directly, or indirectly through one or  
11 more intermediaries, controls or is controlled by, or is under  
12 common control with, the person specified.

13 (3) "Audit committee" means a committee or equivalent  
14 body established by the board of directors of an entity for the  
15 purpose of overseeing the accounting and financial reporting  
16 processes of an insurer or group of insurers, and audits of  
17 financial statements of the insurer or group of insurers. The  
18 audit committee of any entity that controls a group of insurers  
19 may be deemed to be the audit committee for one or more of  
20 these controlled insurers solely for the purposes of this article  
21 at the election of the controlling person. If an audit  
22 committee is not designated by the insurer, the insurer's  
23 entire board of directors shall constitute the audit committee.

24 (4) "Audited financial report" means and includes those  
25 items specified in section four of this article.

26 (5) "Indemnification" means an agreement of indemnity  
27 or a release from liability where the intent or effect is to shift  
28 or limit in any manner the potential liability of the person or  
29 firm for failure to adhere to applicable auditing or other  
30 professional standards, whether or not resulting in part from  
31 knowing of other misrepresentations made by the insurer or  
32 its representatives.

33 (6) "Independent board member" has the same meaning  
34 as described in subdivision (3), section twelve of this article.

35 (7) "Insurer" means any domestic insurer as defined in  
36 section six, article one of this chapter and includes any  
37 domestic stock insurance company, mutual insurance  
38 company, reciprocal insurance company, farmers' mutual fire  
39 insurance company, fraternal benefit society, hospital service  
40 corporation, medical service corporation, health care  
41 corporation, health maintenance organization, captive  
42 insurance company or risk retention group and any licensed  
43 foreign or alien insurer defined in article one of this chapter.

44 (8) "Group of insurers" means those licensed insurers  
45 included in the reporting requirements of article twenty-seven  
46 of this chapter, or a set of insurers as identified by  
47 management for the purpose of assessing the effectiveness of  
48 internal control over financial reporting.

49 (9) "Internal control over financial reporting" means a  
50 process effected by an entity's board of directors,  
51 management and other personnel designed to provide  
52 reasonable assurance regarding the reliability of the financial  
53 statements. The process includes the requirements set forth  
54 in subdivisions (2) through (7), subsection (b), section four  
55 of this article and those policies and procedures that:

56 (A) Pertain to the maintenance of records that, in  
57 reasonable detail, accurately and fairly reflect the transactions  
58 and dispositions of assets;

59 (B) Provide reasonable assurance that transactions are  
60 recorded as necessary to permit preparation of the financial  
61 statements and that receipts and expenditures are being made  
62 only in accordance with authorizations of management and  
63 directors; and

64 (C) Provide reasonable assurance regarding prevention or  
65 timely detection of unauthorized acquisition, use or  
66 disposition of assets that could have a material effect on the  
67 financial statements.

68 (10) "SEC" means the United States Securities and  
69 Exchange Commission.

70 (11) "Section 404" means section 404 of the Sarbanes-  
71 Oxley Act of 2002 and the SEC's rules and regulations  
72 promulgated thereunder.

73 (12) “Section 404 report” means management’s report on  
74 “internal control over financial reporting” as defined by the  
75 SEC and the related attestation report of the independent  
76 certified public accountant as described in subdivision (1) of  
77 this section.

78 (13) “SOX Compliant Entity” means an entity that either  
79 is required to be compliant with, or voluntarily is compliant  
80 with, all of the following provisions of the Sarbanes-Oxley  
81 Act of 2002:

82 (A) The preapproval requirements of Section 201,  
83 Section 10A(i) of the Securities Exchange Act of 1934;

84 (B) The audit committee independence requirements of  
85 Section 301, Section 10A(m)(3) of the Securities Exchange  
86 Act of 1934; and

87 (C) The internal control over financial reporting  
88 requirements of Section 404, Item 308 of SEC Regulation S-  
89 K.

**§33-33-3. General requirements related to filing and extensions  
for filing of annual audited financial reports and  
audit committee appointment.**

1 (a) All insurers shall have an annual audit by an  
2 independent certified public accountant and shall file an  
3 audited financial report with the commissioner on or before  
4 June 1 for the year ending December 31 immediately  
5 preceding. The commissioner may require an insurer to file  
6 an audited financial report earlier than June 1 with ninety  
7 days advance notice to the insurer.

8 (b) Extensions of the filing date on June 1 may be granted  
9 by the commissioner for thirty-day periods upon showing by

10 the insurer and its independent certified public accountant the  
11 reasons for requesting the extension and determination by the  
12 commissioner of good cause for an extension. A request for  
13 extension must be submitted in writing not less than ten days  
14 prior to the due date in sufficient detail to permit the  
15 commissioner to make an informed decision with respect to  
16 the requested extension.

17 (c) If an extension is granted in accordance with the  
18 provisions in subsection (b) of this section, a similar  
19 extension of thirty days is granted to the filing of  
20 management's report of internal control over financial  
21 reporting.

22 (d) Every insurer required to file an annual audited  
23 financial report pursuant to this article shall designate a group  
24 of individuals as constituting its audit committee, as defined  
25 in subdivision (3), section two of this article. The audit  
26 committee of an entity that controls an insurer may be  
27 deemed to be the insurer's audit committee for purposes of  
28 this article at the election of the controlling person.

**§33-33-4. Contents of annual audited financial report.**

1 (a) The annual audited financial report shall report the  
2 financial condition of the insurer as of the end of the most  
3 recent calendar year and the results of its operations, cash  
4 flows and changes in capital and surplus for the year then  
5 ended in conformity with statutory accounting practices  
6 prescribed, or otherwise permitted, by the Insurance  
7 Commissioner of the state of domicile.

8 (b) The annual audited financial report shall include the  
9 following:

10 (1) Report of independent certified public accountant;

11 (2) Balance sheet reporting admitted assets, liabilities,  
12 capital and surplus;

13 (3) Statement of operations;

14 (4) Statement of cash flow;

15 (5) Statement of changes in capital and surplus;

16 (6) Notes to financial statements. These notes shall be  
17 those required by the appropriate National Association of  
18 Insurance Commissioners annual statement instructions and  
19 accounting practices and procedures manual, as amended,  
20 including reconciliation differences, if any, between the  
21 audited statutory financial statements and the annual  
22 statement filed pursuant to section fourteen, article four of  
23 this chapter, with a written description of the nature of these  
24 differences; and

25 (7) The financial statements included in the audited  
26 financial report shall be prepared in a form and using  
27 language and groupings substantially the same as the relevant  
28 sections of the annual statement of the insurer filed with the  
29 commissioner, and the financial statement shall be  
30 comparative, presenting the amounts as of December 31 of  
31 the current year and the amounts as of the immediately  
32 preceding December 31. However, in the first year in which  
33 an insurer is required to file an audited financial report, the  
34 comparative data may be omitted.

**§33-33-5. Designation of independent certified public  
accountant.**

1 (a) Each insurer required by this article to file an annual  
2 audited financial report must, within sixty days after  
3 becoming subject to the requirements, register with the

4 commissioner in writing the name and address of the  
5 independent certified public accountant or accounting firm  
6 retained to conduct the annual audit set forth in this article.  
7 Insurers not retaining an independent certified public  
8 accountant on the effective date of this article shall register  
9 the name and address of their retained independent certified  
10 public accountant not less than six months before the date  
11 when the first audited financial report is to be filed.

12 (b) The insurer shall obtain a letter from the accountant,  
13 and file a copy with the commissioner stating that the  
14 accountant is aware of the provisions of this code and  
15 legislative rules promulgated pursuant to article three, chapter  
16 twenty-nine-a of this code that relate to accounting and  
17 financial matters and affirming that the accountant will  
18 express his or her opinion on the financial statements in terms  
19 of his or her conformity to the statutory accounting practices  
20 prescribed or otherwise permitted by the Insurance  
21 Commissioner specifying any exceptions as he or she may  
22 believe appropriate.

23 (c) If an accountant who was the accountant for the  
24 immediately preceding filed audited financial report is  
25 dismissed or resigns, the insurer shall within five business  
26 days notify the commissioner of this event. The insurer shall  
27 also furnish the commissioner with a separate letter within  
28 ten business days of the above notification stating whether in  
29 the twenty-four months preceding the notification there were  
30 any disagreements with the former accountant on any matter  
31 of accounting principles or practices, financial statement  
32 disclosure or auditing scope or procedure, which  
33 disagreements, if not resolved to the satisfaction of the  
34 former accountant, would have caused him or her to make  
35 reference to the subject matter of the disagreement in  
36 connection with his or her opinion. The disagreements  
37 required to be reported in response to this section include

38 both those resolved to the former accountant's satisfaction  
39 and those not resolved to the former accountant's  
40 satisfaction. Disagreements contemplated by this section are  
41 those that occur at the decision-making level between  
42 personnel of the insurer responsible for presentation of its  
43 financial statements and personnel of the accounting firm  
44 responsible for rendering its report. The insurer shall also in  
45 writing request the former accountant to furnish it in a letter  
46 addressed to the insurer stating whether the accountant agrees  
47 with the statements contained in the insurer's letter and, if  
48 not, stating the reasons for which he or she does not agree;  
49 and the insurer shall furnish the responsive letter from the  
50 former accountant to the commissioner together with its own.

**§33-33-6. Qualifications of independent certified public accountants.**

1 (a) The commissioner may not recognize any person or  
2 firm as a qualified independent certified public accountant for  
3 purposes of performing the annual audited financial report if  
4 the person or firm:

5 (1) Is not in good standing with the American Institute of  
6 Certified Public Accountants and in all states in which the  
7 accountant is licensed to practice, or, for a Canadian or  
8 British company, that is not a chartered accountant; or

9 (2) Has either directly or indirectly entered into an  
10 agreement of indemnification or release from liability with  
11 respect to an audit of the insurer.

12 (b) Except as otherwise provided herein, the  
13 commissioner shall recognize an independent certified public  
14 accountant as qualified as long as he or she conforms to the  
15 standards of his or her profession, as contained in the Code  
16 of Professional Ethics of the American Institute of Certified

17 Public Accountants and the Rules and Regulations and Code  
18 of Ethics and Rules of Professional Conduct of the West  
19 Virginia Board of Accountancy, or similar code.

20 (c) A qualified independent certified public accountant  
21 may enter into an agreement with an insurer to have disputes  
22 relating to an audit resolved by mediation or arbitration. In  
23 the event a delinquency proceeding is commenced against the  
24 insurer under article ten of this chapter, the mediation or  
25 arbitration provisions shall operate at the option of the  
26 receiver.

27 (d) (1) The lead or coordinating audit partner having  
28 primary responsibility for the audit may not act in that  
29 capacity for more than five consecutive years. Following a  
30 period of service, the person shall be disqualified from acting  
31 in that or a similar capacity for the same company or its  
32 insurance subsidiaries or affiliates for a period of five  
33 consecutive years. An insurer may make application to the  
34 commissioner for relief from the above rotation requirement  
35 on the basis of unusual circumstances. This application  
36 should be made at least thirty days before the end of the  
37 calendar year. The commissioner may consider the following  
38 factors in determining if the relief should be granted:

39 (A) Number of partners, expertise of the partners or the  
40 number of insurance clients in the currently registered firm;

41 (B) Premium volume of the insurer; or

42 (C) Number of jurisdictions in which the insurer transacts  
43 business.

44 (2) The insurer shall file, with its annual statement filing,  
45 the approval for relief from subdivision (1) of this subsection  
46 with the states that it is licensed in or doing business in and

47 with the National Association of Insurance Commissioners.  
48 If the nondomestic state accepts electronic filing with the  
49 National Association of Insurance Commissioners, the  
50 insurer shall file the approval in an electronic format.

51 (e) The commissioner may not recognize as a qualified  
52 independent certified public accountant, nor accept any  
53 annual audited financial report, prepared, in whole or in part,  
54 by any natural person who:

55 (1) Has been convicted of fraud, bribery, a violation of  
56 the Racketeer Influenced and Corrupt Organizations Act, 18  
57 U.S.C. Sections 1961-1968, or any dishonest conduct or  
58 practices under federal or state law;

59 (2) Has been found to have violated the insurance laws of  
60 this state with respect to any previous reports submitted  
61 under this article; or

62 (3) Has demonstrated a pattern or practice of failing to  
63 detect or disclose material information in previous reports  
64 filed under the provisions of this article.

65 (f) The commissioner may hold a hearing to determine  
66 whether an independent certified public accountant is  
67 qualified and, considering the evidence presented, may rule  
68 that the accountant is not qualified for purposes of expressing  
69 an opinion on the financial statements in the annual audited  
70 financial report made pursuant to this article and require the  
71 insurer to replace the accountant with another whose  
72 relationship with the insurer is qualified within the meaning  
73 of this article.

74 (g) (1) The commissioner may not recognize as a qualified  
75 independent certified public accountant, nor accept an annual  
76 audited financial report, prepared, in whole or in part, by an

77 accountant who provides to an insurer, contemporaneously with  
78 the audit, the following nonaudit services:

79 (A) Bookkeeping or other services related to the  
80 accounting records or financial statements of the insurer;

81 (B) Financial information systems design and  
82 implementation;

83 (C) Appraisal or valuation services, fairness opinions, or  
84 contribution-in-kind reports;

85 (D) Actuarially-oriented advisory services involving the  
86 determination of amounts recorded in the financial  
87 statements. The accountant may assist an insurer in  
88 understanding the methods, assumptions and inputs used in  
89 the determination of amounts recorded in the financial  
90 statement only if it is reasonable to conclude that the services  
91 provided will not be subject to audit procedures during an  
92 audit of the insurer's financial statements. An accountant's  
93 actuary may also issue an actuarial opinion or certification on  
94 an insurer's reserves if the following conditions have been  
95 met:

96 (i) Neither the accountant nor the accountant's actuary  
97 has performed any management functions or made any  
98 management decisions;

99 (ii) The insurer has competent personnel or engages a  
100 third party actuary to estimate the reserves for which  
101 management takes responsibility; and

102 (iii) The accountant's actuary tests the reasonableness of  
103 the reserves after the insurer's management has determined  
104 the amount of the reserves;

105 (E) Internal audit outsourcing services;

106 (F) Management functions or human resources;

107 (G) Broker or dealer, investment adviser, or investment  
108 banking services;

109 (H) Legal services or expert services unrelated to the  
110 audit; or

111 (I) Any other services that the commissioner determines,  
112 by legislative rule, are impermissible.

113 (2) In general, the principles of independence with  
114 respect to services provided by the qualified independent  
115 certified public accountant are largely predicated on three  
116 basic principles, violations of which would impair the  
117 accountant's independence. The principles are that the  
118 accountant cannot function in the role of management, cannot  
119 audit his or her own work, and cannot serve in an advocacy  
120 role for the insurer.

121 (h) Insurers having direct written and assumed premiums  
122 of less than \$1 million in any calendar year may request an  
123 exemption from subdivision (1), subsection (g) of this  
124 section. The insurer shall file with the commissioner a  
125 written statement discussing the reasons why the insurer  
126 should be exempt from these provisions. If the commissioner  
127 finds, upon review of this statement, that compliance with  
128 subdivision (1), subsection (g) of this section would  
129 constitute a financial or organizational hardship upon the  
130 insurer, an exemption may be granted.

131 (i) A qualified independent certified public accountant  
132 who performs the audit may engage in other nonaudit  
133 services, including tax services, that are not described in

134 subdivision (1), subsection (g) of this section or that do not  
135 conflict with subdivision (2), subsection (g) of this section,  
136 only if the activity is approved in advance by the audit  
137 committee, in accordance with subsection (j) of this section.

138 (j) All auditing services and nonaudit services provided  
139 to an insurer by the qualified independent certified public  
140 accountant of the insurer shall be preapproved by the audit  
141 committee. The preapproval requirement is waived with  
142 respect to nonaudit services if the insurer is a SOX Compliant  
143 Entity or a direct or indirect wholly-owned subsidiary of a  
144 SOX Compliant Entity or:

145 (1) The aggregate amount of all such nonaudit services  
146 provided to the insurer constitutes not more than five percent  
147 of the total amount of fees paid by the insurer to its qualified  
148 independent certified public accountant during the fiscal year  
149 in which the nonaudit services are provided;

150 (2) The services were not recognized by the insurer at the  
151 time of the engagement to be nonaudit services; and

152 (3) The services are promptly brought to the attention of  
153 the audit committee and approved prior to the completion of  
154 the audit by the audit committee or by one or more members  
155 of the audit committee who are the members of the board of  
156 directors to whom authority to grant such approvals has been  
157 delegated by the audit committee.

158 (k) The audit committee may delegate to one or more  
159 designated members of the audit committee the authority to  
160 grant the preapprovals required by subsection (j) of this  
161 section. The decisions of any member to whom this authority  
162 is delegated shall be presented to the full audit committee at  
163 each of its scheduled meetings.

164 (1) The commissioner may not recognize an independent  
165 certified public accountant as qualified for a particular insurer  
166 if a member of the board, president, chief executive officer,  
167 controller, chief financial officer, chief accounting officer, or  
168 any person serving in an equivalent position for that insurer,  
169 was employed by the independent certified public accountant  
170 and participated in the audit of that insurer during the one-  
171 year period preceding the date that the most current statutory  
172 opinion is due. This section shall only apply to partners and  
173 senior managers involved in the audit. An insurer may make  
174 application to the commissioner for relief from the above  
175 requirement on the basis of unusual circumstances.

176 (2) The insurer shall file, with its annual statement filing,  
177 the approval for relief from subdivision (1) of this subsection  
178 with the states that it is licensed in or doing business in and  
179 the National Association of Insurance Commissioners. If the  
180 nondomestic state accepts electronic filing with the National  
181 Association of Insurance Commissioners, the insurer shall  
182 file the approval in an electronic format acceptable to the  
183 National Association of Insurance Commissioners.

**§33-33-8. Scope of audit and report of independent certified  
public accountant.**

1 Financial statements furnished pursuant to section four of  
2 this article shall be examined by the independent certified  
3 public accountant. The audit of the insurer's financial  
4 statements shall be conducted in accordance with generally  
5 accepted auditing standards. In accordance with AU Section  
6 319 of the professional standards of the American Institute of  
7 Certified Public Accountants, "Consideration of Internal  
8 Control in a Financial Statement Audit" or its replacement,  
9 the independent certified public accountant should obtain an  
10 understanding of internal control sufficient to plan the audit.  
11 To the extent required by AU 319, for those insurers required

12 to file a management's report of internal control over  
13 financial reporting pursuant to section fifteen of this article,  
14 the independent certified public accountant should consider,  
15 as that term is defined in Statement on Auditing Standards  
16 No. 102, "Defining Professional Requirements in Statements  
17 on Auditing Standards" or its replacement, the most recently  
18 available report in planning and performing the audit of the  
19 statutory financial statements. Consideration shall be given  
20 to the procedures illustrated in the Financial Condition  
21 Examiners Handbook promulgated by the National  
22 Association of Insurance Commissioners as the independent  
23 certified public accountant deems necessary.

**§33-33-9. Notification of adverse financial condition.**

1 (a) The insurer required to furnish the annual audited  
2 financial report shall require the independent certified public  
3 accountant to report, in writing, within five business days to  
4 the board of directors or its audit committee any  
5 determination by the independent certified public accountant  
6 that the insurer has materially misstated its financial  
7 condition as reported to the commissioner as of the balance  
8 sheet date currently under audit or that the insurer does not  
9 meet the minimum capital and surplus requirements of this  
10 chapter as of that date. An insurer that has received a report  
11 pursuant to this subsection shall forward a copy of the report  
12 to the commissioner within five business days of receipt of  
13 the report and shall provide the independent certified public  
14 accountant making the report with evidence of the report  
15 being furnished to the commissioner. If the independent  
16 certified public accountant fails to receive the evidence  
17 within the required five business day period, the independent  
18 certified public accountant shall furnish to the  
19 commissioner a copy of his or her report within the next  
20 five business days.

21 (b) No independent public accountant shall be liable in  
22 any manner to any person for any statement made in  
23 connection with subsection (a) of this section if the statement  
24 is made in good faith in compliance with said subsection.

25 (c) If the accountant, subsequent to the date of the audited  
26 financial report filed pursuant to this article, becomes aware  
27 of facts which might have affected the report, the  
28 commissioner notes the obligation of the accountant to take  
29 action as prescribed in volume 1, section AU 561 of the  
30 professional standards of the American Institute of Certified  
31 Public Accountants.

**§33-33-10. Communication of internal control related matters  
noted in an audit.**

1 (a) In addition to the annual audited financial report, each  
2 insurer shall furnish the commissioner with a written  
3 communication as to any unremediated material weaknesses in  
4 its internal control over financial reporting noted by the  
5 accountant during the audit. Such communication shall be  
6 prepared by the accountant within sixty days after the filing of  
7 the annual audited financial report, and shall contain a  
8 description of any unremediated material weakness, as the term  
9 material weakness is defined by Statement on Auditing  
10 Standards (SAS) No. 60, "Communication of Internal Control  
11 Related Matters Noted in an Audit" or its replacement, as of  
12 December 31 immediately preceding, so as to coincide with the  
13 audited financial report discussed in subsection (a), section three  
14 of this article, in the insurer's internal control over financial  
15 reporting noted by the accountant during the course of their  
16 audit of the financial statements. If no unremediated material  
17 weaknesses were noted, the communication should so state.

18 (b) The insurer is required to provide a description of  
19 remedial actions taken or proposed to correct unremediated

20 material weaknesses, if the actions are not described in the  
21 accountant's communication.

**§33-33-10a. Accountant's letter of qualifications.**

1 The accountant shall furnish the insurer in connection  
2 with, and for inclusion in, the filing of the annual audited  
3 financial report, a letter stating:

4 (1) That the accountant is independent with respect to the  
5 insurer and conforms to the standards of his or her profession  
6 as contained in the code of professional ethics and  
7 pronouncements of the American Institute of Certified Public  
8 Accountants and the rules of professional conduct of the  
9 West Virginia Board of Accountancy, or similar code;

10 (2) The background and experience in general, and the  
11 experience in audits of insurers of the staff assigned to the  
12 engagement and whether each is an independent certified  
13 public accountant. Nothing within this article shall be  
14 construed as prohibiting the accountant from utilizing such  
15 staff as he or she deems appropriate where use is consistent  
16 with the standards prescribed by generally accepted auditing  
17 standards;

18 (3) That the accountant understands the annual audited  
19 financial report and his or her opinion thereon will be filed in  
20 compliance with this article and that the commissioner will  
21 be relying on this information in the monitoring and  
22 regulation of the financial position of insurers;

23 (4) That the accountant consents to the requirements of  
24 section eleven of this article and that the accountant consents  
25 and agrees to make available for review by the commissioner,  
26 or the commissioner's designee or appointed agent, the  
27 workpapers, as defined in section eleven of this article;

28 (5) A representation that the accountant is properly  
29 licensed by an appropriate state licensing authority and is a  
30 member in good standing in the American Institute of  
31 Certified Public Accountants; and

32 (6) A representation that the accountant is in compliance  
33 with the requirements of section six of this article.

**§33-33-11. Definition, availability and maintenance of  
independent certified public accountant  
workpapers.**

1 (a) Workpapers are the records kept by the independent  
2 certified public accountant of the procedures followed, the  
3 tests performed, the information obtained, and the  
4 conclusions reached pertinent to the accountant's audit of the  
5 financial statements of an insurer. Workpapers may include  
6 audit planning documentation, work programs, analyses,  
7 memoranda, letters of confirmation and representation,  
8 abstracts of company documents and schedules or  
9 commentaries prepared or obtained by the independent  
10 certified public accountant in the course of his or her audit of  
11 the financial statements of an insurer and which support the  
12 accountant's opinion.

13 (b) Every insurer required to file an audited financial  
14 report pursuant to this article shall require the accountant to  
15 make available for review by the commissioner all  
16 workpapers prepared in the conduct of the accountant's audit  
17 and any communications related to the audit between the  
18 accountant and the insurer, at the offices of the insurer, at the  
19 insurance department or at any other reasonable place  
20 designated by the commissioner. The insurer shall require  
21 that the accountant retain the audit workpapers and  
22 communications until the commissioner has filed a report of  
23 examination, as required by section nine, article two of this

24 chapter, covering the period of the audit but no longer than  
25 seven years from the date of the audit report.

26 (c) In the conduct of the aforementioned periodic review  
27 by the commissioner, it shall be agreed that copies of  
28 pertinent audit workpapers may be made and retained by the  
29 commissioner. Reviews by the commissioner shall be  
30 considered investigations and all workpapers and  
31 communications obtained during the course of such  
32 investigations shall be afforded the same confidentiality as  
33 other examination workpapers generated by the  
34 commissioner.

**§33-33-12. Requirements for audit committees.**

1 This section shall not apply to foreign or alien insurers  
2 licensed in this state or an insurer that is a SOX Compliant  
3 Entity or a direct or indirect wholly-owned subsidiary of a  
4 SOX Compliant Entity.

5 (1) The audit committee shall be directly responsible for  
6 the appointment, compensation and oversight of the work of  
7 any accountant, including resolution of disagreements  
8 between management and the accountant regarding financial  
9 reporting, for the purpose of preparing or issuing the audited  
10 financial report or related work pursuant to this article. Each  
11 accountant shall report directly to the audit committee.

12 (2) Each member of the audit committee shall be a  
13 member of the board of directors of the insurer or a member  
14 of the board of directors of an entity elected pursuant to  
15 subdivision (3), section two of this article and subdivision (5)  
16 of this section.

17 (3) In order to be considered independent for purposes of  
18 this section, a member of the audit committee may not, other

19 than in his or her capacity as a member of the audit  
20 committee, the board of directors, or any other board  
21 committee, accept any consulting, advisory or other  
22 compensatory fee from the entity or be an affiliated person of  
23 the entity or subsidiary thereof. However, if law requires  
24 board participation by otherwise nonindependent members,  
25 that law shall prevail and such members may participate in  
26 the audit committee and be designated as independent for  
27 audit committee purposes, unless they are an officer or  
28 employee of the insurer or one of its affiliates.

29 (4) If a member of the audit committee ceases to be  
30 independent for reasons outside the member's reasonable  
31 control, that person, with notice by the responsible entity to  
32 the state, may remain an audit committee member of the  
33 responsible entity until the earlier of the next annual meeting  
34 of the responsible entity or one year from the occurrence of  
35 the event that caused the member to be no longer  
36 independent.

37 (5) To exercise the election of the controlling person to  
38 designate the audit committee for purposes of this article, the  
39 ultimate controlling person shall provide written notice to the  
40 commissioners of the affected insurers. Notification shall be  
41 made timely prior to the issuance of the statutory audit report  
42 and include a description of the basis for the election. The  
43 election can be changed through notice to the commissioner  
44 by the insurer, which shall include a description of the basis  
45 for the change. The election shall remain in effect for  
46 perpetuity, until rescinded.

47 (6)(A) The audit committee shall require the  
48 accountant that performs for an insurer any audit  
49 required by this article to timely report to the audit  
50 committee in accordance with the requirements of  
51 Statement of Auditing Standards (SAS) No. 61,

52 “Communication with Audit Committees” or its  
 53 replacement, including:

54 (i) All significant accounting policies and material  
 55 permitted practices;

56 (ii) All material alternative treatments of financial  
 57 information within statutory accounting principles that have  
 58 been discussed with management officials of the insurer,  
 59 ramifications of the use of the alternative disclosures and  
 60 treatments, and the treatment preferred by the accountant;  
 61 and

62 (iii) Other material written communications between the  
 63 accountant and the management of the insurer, such as any  
 64 management letter or schedule of unadjusted differences.

65 (B) If an insurer is a member of an insurance holding  
 66 company system, the reports required by paragraph (A) of  
 67 this subdivision may be provided to the audit committee on  
 68 an aggregate basis for insurers in the holding company  
 69 system, provided that any substantial differences among  
 70 insurers in the system are identified to the audit committee.

71 (7) The proportion of independent audit committee  
 72 members shall meet or exceed the following criteria:

<b>Prior Calendar Year Direct Written and Assumed Premiums</b>		
<b>\$0-\$300,000,000</b>	<b>Over \$300,000,000- \$500,000,000</b>	<b>Over \$500,000,000</b>
<b>No minimum requirements.</b>	<b>Majority (50% or more) of members shall be independent.</b>	<b>Supermajority of members (75% or more) shall be independent.</b>

1 (A) The commissioner has authority afforded by state law  
 2 to require the entity’s board to enact improvements to the  
 3 independence of the audit committee membership if the

4 insurer is in a risk based capital action level event, meets one  
5 or more of the standards of an insurer deemed to be in  
6 hazardous financial condition, or otherwise exhibits qualities  
7 of a troubled insurer.

8 (B) All insurers with less than \$500 million in prior year  
9 direct written and assumed premiums are encouraged to  
10 structure their audit committees with at least a supermajority  
11 of independent audit committee members.

12 (C) Prior calendar year direct written and assumed  
13 premiums shall be the combined total of direct premiums and  
14 assumed premiums from nonaffiliates for the reporting  
15 entities.

16 (8) An insurer with direct written and assumed premium,  
17 excluding premiums reinsured with the Federal Crop  
18 Insurance Corporation and Federal Flood Program for less  
19 than \$500 million, may make application to the  
20 commissioner for a waiver from this section's requirements  
21 based upon hardship. The insurer shall file, with its annual  
22 statement filing, the approval for relief from this section with  
23 the states that it is licensed in or doing business in and the  
24 National Association of Insurance Commissioners. If the  
25 nondomestic state accepts electronic filing with the National  
26 Association of Insurance Commissioners, the insurer shall  
27 file the approval in an electronic format acceptable to the  
28 National Association of Insurance Commissioners.

**§33-33-13. Conduct of insurer in connection with the  
preparation of required reports and  
documents.**

1 (a) No director or officer of an insurer shall, directly or  
2 indirectly:

3 (1) Make or cause to be made a materially false or  
4 misleading statement to an accountant in connection with any  
5 audit, review or communication required under this article; or

6 (2) Omit to state, or cause another person to omit to state,  
7 any material fact necessary in order to make statements  
8 made, in light of the circumstances under which the  
9 statements were made, not misleading to an accountant in  
10 connection with any audit, review or communication required  
11 under this article.

12 (b) No officer or director of an insurer, or any other  
13 person acting under the direction thereof, shall directly or  
14 indirectly take any action to coerce, manipulate, mislead or  
15 fraudulently influence any accountant engaged in the  
16 performance of an audit pursuant to this article if that person  
17 knew or should have known that the action, if successful,  
18 could result in rendering the insurer's financial statements  
19 materially misleading.

20 (c) For purposes of subsection (b) of this section, actions  
21 that, "if successful, could result in rendering the insurer's  
22 financial statements materially misleading" include, but are  
23 not limited to, actions taken at any time with respect to the  
24 professional engagement period to coerce, manipulate,  
25 mislead or fraudulently influence an accountant:

26 (1) To issue or reissue a report on an insurer's financial  
27 statements that is not warranted in the circumstances due to  
28 material violations of statutory accounting principles  
29 prescribed by the commissioner, generally accepted auditing  
30 standards, or other professional or regulatory standards;

31 (2) Not to perform audit, review or other procedures  
32 required by generally accepted auditing standards or other  
33 professional standards;

34 (3) Not to withdraw an issued report; or

35 (4) Not to communicate matters to an insurer's audit  
36 committee.

**§33-33-14. Canadian and British companies.**

1 (a) In the case of Canadian and British insurers, the  
2 annual audited financial report shall be defined as the annual  
3 statement of total business on the form filed by the  
4 companies with their supervision authority duly audited by an  
5 independent chartered accountant.

6 (b) For Canadian and British insurers, the letter required  
7 in subsection (b), section five of this article shall state that the  
8 accountant is aware of the requirements relating to the annual  
9 audited financial report filed with the commissioner pursuant  
10 to section three of this article and shall affirm that the opinion  
11 expressed is in conformity with those requirements.

**§33-33-15. Management's report of internal control over  
financial reporting.**

1 (a) Every insurer required to file an audited financial  
2 report pursuant to this article that has annual direct written  
3 and assumed premiums, excluding premiums reinsured with  
4 the Federal Crop Insurance Corporation and Federal Flood  
5 Program, of \$500 million, or more, shall prepare a report of  
6 the insurer's or group of insurers' internal control over  
7 financial reporting, as these terms are defined in section two  
8 of this article. The report shall be filed with the  
9 commissioner along with the communication of internal  
10 control related matters noted in an audit described under  
11 section ten of this article. Management's report of internal  
12 control over financial reporting shall be filed as of December  
13 31 immediately preceding.

14 (b) Notwithstanding the premium threshold in  
15 subsection (a) of this section, the commissioner may  
16 require an insurer to file management's report of internal  
17 control over financial reporting if the insurer is in any  
18 risk-based capital level event, or meets any one or more  
19 of the standards of an insurer deemed to be in hazardous  
20 financial condition as defined in article ten of this  
21 chapter.

22 (c) An insurer or a group of insurers may file its or its  
23 parent's Section 404 Report and an addendum in satisfaction  
24 of this section's requirement provided that those internal  
25 controls of the insurer or group of insurers having a material  
26 impact on the preparation of the insurer's or group of  
27 insurers' audited statutory financial statements were included  
28 in the scope of the Section 404 Report and if the insurer or  
29 group of insurers is:

30 (1) Directly subject to Section 404;

31 (2) Part of a holding company system whose parent is  
32 directly subject to Section 404;

33 (3) Not directly subject to Section 404 but is a SOX  
34 Compliant Entity; or

35 (4) A member of a holding company system whose  
36 parent is not directly subject to Section 404 but is a SOX  
37 Compliant Entity.

38 (d) The addendum referenced in subsection (c) of this  
39 section shall be a positive statement by management that  
40 there is no material process with respect to the preparation of  
41 the insurer's or group of insurers' audited statutory financial  
42 statements excluded from the Section 404 Report.

43 (e) If there are internal controls of the insurer or group of  
44 insurers that have a material impact on the preparation of the  
45 insurer's or group of insurers' audited statutory financial  
46 statements and those internal controls were not included in  
47 the scope of the Section 404 Report, the insurer or group of  
48 insurers may either file:

49 (1) A report pursuant to subsection (a) of this section; or

50 (2) The Section 404 Report and a [Section 16] report  
51 pursuant to subsection (a) of this section for those internal  
52 controls that have a material impact on the preparation of the  
53 insurer's or group of insurers' audited statutory financial  
54 statements not covered by the Section 404 Report.

55 (f) Management's report of internal control over financial  
56 reporting shall include:

57 (1) A statement that management is responsible for  
58 establishing and maintaining adequate internal control over  
59 financial reporting;

60 (2) A statement that management has established internal  
61 control over financial reporting and an assertion, to the best  
62 of management's knowledge and belief, after diligent  
63 inquiry, as to whether its internal control over financial  
64 reporting is effective to provide reasonable assurance  
65 regarding the reliability of financial statements in accordance  
66 with statutory accounting principles;

67 (3) A statement that briefly describes the approach or  
68 processes by which management evaluated the effectiveness  
69 of its internal control over financial reporting;

70 (4) A statement that briefly describes the scope of work  
71 that is included and whether any internal controls were  
72 excluded;

73 (5) Disclosure of any unremediated material weaknesses  
74 in the internal control over financial reporting identified by  
75 management as of the December 31 immediately preceding.  
76 Management is not permitted to conclude that the internal  
77 control over financial reporting is effective to provide  
78 reasonable assurance regarding the reliability of financial  
79 statements in accordance with statutory accounting principles  
80 if there is one or more unremediated material weaknesses in  
81 its internal control over financial reporting;

82 (6) A statement regarding the inherent limitations of  
83 internal control systems; and

84 (7) Signatures of the chief executive officer and the chief  
85 financial officer, or the equivalent position or title.

86 (g) Management shall document and make available upon  
87 financial condition examination the basis upon which its  
88 assertions, required in subsection (f) of this section, are made.  
89 Management may base its assertions, in part, upon its review,  
90 monitoring and testing of internal controls undertaken in the  
91 normal course of its activities.

92 (1) Management shall have discretion as to the nature of  
93 the internal control framework used, and the nature and  
94 extent of documentation, in order to make its assertion in a  
95 cost effective manner and, as such, may include assembly of  
96 or reference to existing documentation.

97 (2) Management's report on internal control over  
98 financial reporting, required by subsection (a) of this section,  
99 and any documentation provided in support thereof during  
100 the course of a financial condition examination, shall be kept  
101 confidential by the commissioner.

**§33-33-16. Exemptions and effective dates.**

1 (a) Upon written application of any insurer, the  
2 commissioner may grant an exemption from compliance with  
3 any and all provisions of this article if the commissioner  
4 finds, upon review of the application, that compliance with  
5 this article would constitute a financial or organizational  
6 hardship upon the insurer. An exemption may be granted at  
7 any time and from time to time for a specified period or  
8 periods. Within ten days from a denial of an insurer's written  
9 request for an exemption from this article, the insurer may  
10 request in writing a hearing on its application for an  
11 exemption.

12 (b) Unless otherwise provided in this section, the  
13 provisions of this article shall become effective on January 1,  
14 2010.

15 (c) Domestic insurers retaining a certified public  
16 accountant on the effective date of this article who qualify as  
17 independent shall comply with this article for the year ending  
18 December 31, 2010, and each year thereafter, unless the  
19 commissioner permits otherwise.

20 (d) Domestic insurers not retaining a certified public  
21 accountant on the effective date of this article who qualifies  
22 as independent may meet the following schedule for  
23 compliance unless the commissioner permits otherwise:

24 (1) As of December 31, 2010, file with the commissioner  
25 an audited financial report; and

26 (2) For the year ending December 31, 2010, and each  
27 year thereafter, such insurers shall file with the commissioner  
28 all reports and communication required by this article.

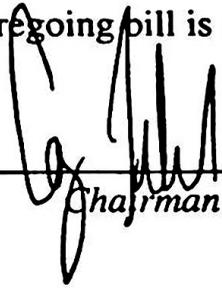
29 (e) Foreign insurers shall comply with this article for the  
30 year ending December 31, 2010, and each year thereafter,  
31 unless the commissioner permits otherwise.

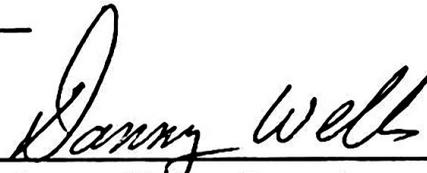
32 (f) The requirements of subsection (d), section six of this  
33 article shall be in effect for audits of the year beginning  
34 January 1, 2010, and each year thereafter.

35 (g) The requirements of section twelve of this article are  
36 to be in effect January 1, 2010, and each year thereafter. An  
37 insurer or group of insurers that is not required to have  
38 independent audit committee members or only a majority of  
39 independent audit committee members, as opposed to a  
40 supermajority, because the total written and assumed  
41 premium is below the threshold and subsequently becomes  
42 subject to one of the independence requirements due to  
43 changes in premium shall have one year following the year  
44 the threshold exceeded to comply with the independence  
45 requirements. An insurer that becomes subject to one of the  
46 independence requirements as a result of a business  
47 combination shall have one calendar year following the date  
48 of acquisition or combination to comply with the  
49 independence requirements.

50 (h) The requirements of section fifteen of this article are  
51 effective beginning with the reporting period ending  
52 December 31, 2010, and each year thereafter. An insurer or  
53 group of insurers that is not required to file a report because  
54 the total written premium is below the threshold and  
55 subsequently becomes subject to the reporting requirements  
56 shall have two years following the year the threshold is  
57 exceeded to file a report. An insurer acquired in a business  
58 combination shall have two calendar years following the date  
59 of acquisition or combination to comply with the reporting  
60 requirements.

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

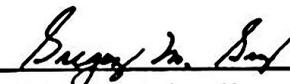
  
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Chairman Senate Committee

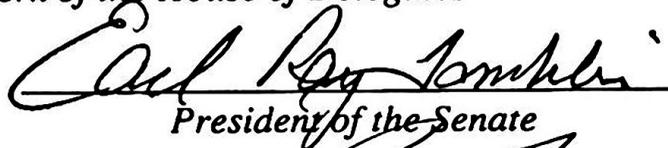
  
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Chairman House Committee

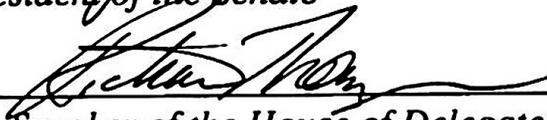
Originating in the House.

In effect ninety days from passage.

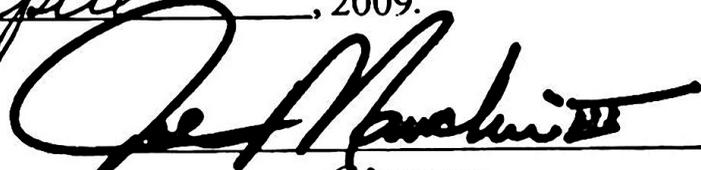
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 21<sup>st</sup>  
day of April, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

APR 16 2009

Time 2:15 pm