

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2480

BY DELEGATES HOTT, WESTFALL, AZINGER, D. JEFFRIES,

GRAVES, JENNINGS, CRISS, MANDT, NELSON, ESPINOSA

AND PORTERFIELD

[BY REQUEST OF THE INSURANCE COMMISSION]

[Introduced January 17, 2019; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §33-27-2 and §33-27-7 of the Code of West Virginia, 1931, as
2 amended; and to amend said code by adding thereto a new section, designated §33-27-
3 6b, all relating to the regulation of an internationally active insurance group; defining
4 group-wide supervisor and internationally active insurance group; providing authority for
5 the insurance commissioner to act as a group-wide supervisor for an internationally active
6 insurance group; permitting the insurance commissioner to acknowledge another
7 regulatory official as the group-wide supervisor for an internationally active insurance
8 group under certain criteria; requiring insurance companies to submit information
9 necessary for the insurance commissioner to determine whether he or she may act as the
10 group-wide supervisor for an internationally active insurance group; authorizing specific
11 regulatory actions when the insurance commissioner is acting as a group-wide supervisor
12 for an internationally active insurance group; allowing the insurance commissioner to enter
13 into agreements with insurers regarding his or her role as group-wide supervisor for an
14 internationally active insurance group; permitting the promulgation of rules; making
15 insurers liable for the reasonable expenses of the insurance commissioner's participation
16 as a group-wide supervisor for an internationally active insurance group; and rendering
17 information provided by insurers to the insurance commissioner in connection with the
18 commissioner's role as a group-wide supervisor for an internationally active insurance
19 group as confidential and privileged.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2. Definitions.

1 As used in this article:

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

5 (b) "Commissioner" means the West Virginia Insurance Commissioner, his or her deputies
6 or the West Virginia offices of the Insurance Commissioner, as appropriate.

7 (c) "Control" (including the terms "controlling", "controlled by", and "under common control
8 with") means the possession, direct or indirect, of the power to direct or cause the direction of the
9 management and policies of a person, whether through the ownership of voting securities, by
10 contract other than a commercial contract for goods or nonmanagement services or otherwise,
11 unless the power is the result of an official position with or corporate office held by the person.
12 Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with
13 the power to vote or holds proxies representing ten percent or more of the voting securities of any
14 other person. This presumption may be rebutted by a showing made in the manner provided by
15 subsection (k), section four of this article that control does not exist in fact. The commissioner
16 may determine after furnishing all persons in interest notice and opportunity to be heard and
17 making specific findings of fact to support the determination that control exists in fact
18 notwithstanding the absence of a presumption to that effect.

19 (d) "Enterprise risk" means any activity, circumstance, event or series of events involving
20 one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material
21 adverse effect upon the financial condition or liquidity of the insurer or its insurance holding
22 company system as a whole, including, but not limited to, anything that would cause the insurer's
23 risk-based capital to fall into company action level, as set forth in article forty of this chapter, or
24 would cause the insurer to be in hazardous financial condition, as set forth in article thirty-four of
25 this chapter.

26 (e) "Group-wide supervisor" means the regulatory official authorized to engage in
27 conducting and coordinating group-wide supervision activities who is determined or
28 acknowledged by the commissioner under §33-27-6b of this code to have sufficient significant
29 contacts with the internationally active insurance group.

30 ~~(e)~~ (f) "Insurance holding company system" consists of two or more affiliated persons, one
31 or more of which is an insurer.

32 ~~(f)~~ (g) "Insurer" means any person or persons or corporation, partnership or company
33 authorized by the laws of this state to transact the business of insurance in this state, except that
34 it shall not include agencies, authorities or instrumentalities of the United States, its possessions
35 and territories, the commonwealth of Puerto Rico, the District of Columbia or a state or political
36 subdivision of a state.

37 (h) "Internationally active insurance group" means an insurance holding company system
38 that includes an insurer registered under §33-27-4 of this code and meets the following criteria:

39 (1) Premiums written in at least three countries;

40 (2) The percentage of gross premiums written outside the United States is at least 10
41 percent of the insurance holding company system's total gross written premiums; and

42 (3) Based on a three-year rolling average, the total assets of the insurance holding
43 company system are at least \$50 billion or the total gross written premiums of the insurance
44 holding company system are at least \$10 billion.

45 ~~(g)~~ (i) "Person" means an individual, a corporation, a limited liability company, a
46 partnership, an association, a joint-stock company, a trust, an unincorporated organization, a
47 depository institution or any similar entity, or any combination of the foregoing acting in concert,
48 but does not include any joint venture partnership exclusively engaged in owning, managing,
49 leasing, or developing real or tangible personal property.

50 ~~(h)~~ (j) A "security holder" of a specified person is one who owns any security of such
51 person, including common stock, preferred stock, debt obligations, and any other security
52 convertible into or evidencing the right to acquire any of the foregoing.

53 ~~(i)~~ (k) A "subsidiary" of a specified person is an affiliate controlled by such person directly
54 or indirectly through one or more intermediaries.

55 ~~(j)~~ (l) “Voting security” includes any security convertible into or evidencing a right to acquire
56 a voting security.

§33-27-6b. Group-wide supervision of internationally active insurance groups.

1 (a) The commissioner is authorized to act as the group-wide supervisor for any
2 internationally active insurance group in accordance with the provisions of this section. However,
3 the commissioner may otherwise acknowledge another regulatory official as the group-wide
4 supervisor where the internationally active insurance group:

- 5 (1) Does not have substantial insurance operations in the United States;
6 (2) Has substantial insurance operations in the United States, but not in this state; or
7 (3) Has substantial insurance operations in the United States and this state, but the
8 commissioner has determined pursuant to the factors set forth in subsections (c) and (g) of this
9 section that the other regulatory official is the appropriate group-wide supervisor.

10 (b) An insurance holding company system that does not otherwise qualify as an
11 internationally active insurance group may request that the commissioner make a determination
12 or acknowledgment as to a group-wide supervisor pursuant to this section.

13 (c) In cooperation with other state, federal and international regulatory agencies, the
14 commissioner will identify a single group-wide supervisor for an internationally active insurance
15 group. The commissioner may determine that the commissioner is the appropriate group-wide
16 supervisor for an internationally active insurance group that conducts substantial insurance
17 operations concentrated in this state. However, the commissioner may acknowledge that a
18 regulatory official from another jurisdiction is the appropriate group-wide supervisor for the
19 internationally active insurance group. The commissioner shall consider the following factors
20 when making a determination or acknowledgment under this subsection:

- 21 (1) The place of domicile of the insurers within the internationally active insurance group
22 that hold the largest share of the group’s written premiums, assets or liabilities;

23 (2) The place of domicile of the top-tiered insurer(s) in the insurance holding company
24 system of the internationally active insurance group;

25 (3) The location of the executive offices or largest operational offices of the internationally
26 active insurance group;

27 (4) Whether another regulatory official is acting or is seeking to act as the group-wide
28 supervisor under a regulatory system that the commissioner determines to be:

29 (A) Substantially similar to the system of regulation provided under the laws of this state;

30 or

31 (B) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk
32 analysis, and cooperation with other regulatory officials; and

33 (5) Whether another regulatory official acting or seeking to act as the group-wide
34 supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

35 However, a commissioner identified under this section as the group-wide supervisor may
36 determine that it is appropriate to acknowledge another supervisor to serve as the group-wide
37 supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration
38 of the factors listed in subdivisions (1) through (5) of this subsection, and shall be made in
39 cooperation with and subject to the acknowledgment of other regulatory officials involved with
40 supervision of members of the internationally active insurance group, and in consultation with the
41 internationally active insurance group.

42 (d) Notwithstanding any other provision of law, when another regulatory official is acting
43 as the group-wide supervisor of an internationally active insurance group, the commissioner shall
44 acknowledge that regulatory official as the group-wide supervisor. However, the commissioner
45 shall make a determination or acknowledgment as to the appropriate group-wide supervisor for
46 such an internationally active insurance group pursuant to subsection (c) of this section in the
47 event of a material change in the internationally active insurance group that results in:

48 (1) The internationally active insurance group's insurers domiciled in this state holding the
49 largest share of the group's premiums, assets, or liabilities; or

50 (2) This state being the place of domicile of the top-tiered insurer(s) in the insurance
51 holding company system of the internationally active insurance group.

52 (e) Pursuant to §33-27-6 of this code, the commissioner is authorized to collect from any
53 insurer registered pursuant to §33-27-4 of this code all information necessary to determine
54 whether the commissioner may act as the group-wide supervisor of an internationally active
55 insurance group or if the commissioner may acknowledge another regulatory official to act as the
56 group-wide supervisor. Prior to issuing a determination that an internationally active insurance
57 group is subject to group-wide supervision by the commissioner, the commissioner shall notify
58 the insurer registered pursuant to §33-27-4 of this code and the ultimate controlling person within
59 the internationally active insurance group. The internationally active insurance group shall have
60 not less than 30 days to provide the commissioner with additional information pertinent to the
61 pending determination. The commissioner shall publish on the agency's internet website the
62 identity of internationally active insurance groups that the commissioner has determined are
63 subject to group-wide supervision by the commissioner.

64 (f) If the commissioner is the group-wide supervisor for an internationally active insurance
65 group, the commissioner is authorized to engage in any of the following group-wide supervision
66 activities:

67 (1) Assess the enterprise risks within the internationally active insurance group to ensure
68 that:

69 (A) The material financial condition and liquidity risks to the members of the internationally
70 active insurance group that are engaged in the business of insurance are identified by
71 management; and

72 (B) Reasonable and effective mitigation measures are in place;

73 (2) Request from any member of an internationally active insurance group subject to the
74 commissioner's supervision information necessary and appropriate to assess enterprise risk,
75 including, but not limited to, information about the members of the internationally active insurance
76 group regarding:

77 (A) Governance, risk assessment and management;

78 (B) Capital adequacy; and

79 (C) Material intercompany transactions;

80 (3) Coordinate and, through the authority of the regulatory officials of the jurisdictions
81 where members of the internationally active insurance group are domiciled, compel development
82 and implementation of reasonable measures designed to ensure that the internationally active
83 insurance group is able to timely recognize and mitigate enterprise risks to members of such
84 internationally active insurance group that are engaged in the business of insurance;

85 (4) Communicate with other state, federal, and international regulatory agencies for
86 members within the internationally active insurance group and share relevant information subject
87 to the confidentiality provisions of section seven of this article, through supervisory colleges as
88 set forth in §33-27-6 of this code or otherwise;

89 (5) Enter into agreements with or obtain documentation from any insurer registered under
90 §33-27-4 of this code, any member of the internationally active insurance group, and any other
91 state, federal and international regulatory agencies for members of the internationally active
92 insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-
93 wide supervisor, including provisions for resolving disputes with other regulatory officials. Such
94 agreements or documentation shall not serve as evidence in any proceeding that any insurer or
95 person within an insurance holding company system not domiciled or incorporated in this state is
96 doing business in this state or is otherwise subject to jurisdiction in this state; and

97 (6) Other group-wide supervision activities, consistent with the authorities and purposes
98 enumerated above, as considered necessary by the commissioner.

99 (g) If the commissioner acknowledges that another regulatory official from a jurisdiction
100 that is not accredited by the National Association of Insurance Commissioners is the group-wide
101 supervisor, the commissioner is authorized to reasonably cooperate, through supervisory
102 colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor:

103 Provided, That:

104 (1) The commissioner's cooperation is in compliance with the laws of this state; and

105 (2) The regulatory official acknowledged as the group-wide supervisor also recognizes
106 and cooperates with the commissioner's activities as a group-wide supervisor for other
107 internationally active insurance groups where applicable. Where such recognition and
108 cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition
109 and cooperation.

110 (h) The commissioner is authorized to enter into agreements with or obtain documentation
111 from any insurer registered under §33-27-4 of this code, any affiliate of the insurer, and other
112 state, federal, and international regulatory agencies for members of the internationally active
113 insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-
114 wide supervisor.

115 (i) A registered insurer subject to this section shall be liable for and shall pay the
116 reasonable expenses of the commissioner's participation in the administration of this section,
117 including the engagement of attorneys, actuaries and any other professionals, and all reasonable
118 travel expenses.

§33-27-7. Confidential treatment.

1 (a) Documents, materials or other information in the possession or control of the
2 commissioner that are obtained by or disclosed to the commissioner or any other person in the
3 course of an examination or investigation made pursuant to §33-27-6 of this code and all
4 information reported or provided to the commissioner pursuant to §33-27-3(b) ~~(13)~~ (12) or §33-
5 27-3(b)~~(14)~~ (13) of this code; §33-27-4 of this code; ~~or~~ §33-27-5 of this code; or §33-27-6b of this

6 code is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B of
7 this code, is not open to public inspection, is not subject to subpoena, is not subject to discovery
8 or admissible in evidence in any criminal, private civil, or administrative action and is not subject
9 to production pursuant to court order: *Provided*, That the commissioner is authorized to use the
10 documents, materials or other information in the furtherance of any regulatory or legal action
11 brought as part of the commissioner's official duties. The commissioner may not otherwise make
12 the documents, materials or other information public without the prior written consent of the
13 insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who
14 would be affected thereby notice and opportunity to be heard, determines that the interests of
15 policyholders, shareholders or the public will be served by the publication thereof, in which event
16 he or she may publish all or any part thereof in any manner as he or she may consider appropriate.

17 (b) Neither the commissioner nor any person who received documents, materials or other
18 information while acting under the authority of the commissioner or with whom such documents,
19 materials or other information are shared pursuant to this article may be permitted or required to
20 testify in any private civil action concerning any confidential documents, materials, or information
21 subject to subsection (a) of this section.

22 (c) In order to assist in the performance of the commissioner's duties, the commissioner:

23 (1) May share documents, materials or other information, including the confidential and
24 privileged documents, materials or information subject to subsection (a) of this section, with other
25 state, federal, and international regulatory agencies, with the National Association of Insurance
26 Commissioners and its affiliates and subsidiaries, and with state, federal, and international law
27 enforcement authorities, including members of any supervisory college described in §33-27-6a of
28 this code, if the recipient agrees in writing to maintain the confidentiality and privileged status of
29 the document, material or other information, and has verified in writing the legal authority to
30 maintain confidentiality;

31 (2) Notwithstanding subdivision (1) of this subsection, the commissioner may only share
32 confidential and privileged documents, material, or information reported pursuant to §33-27-4(l)
33 of this code, with commissioners of states having statutes or regulations substantially similar to
34 subdivision (1) of this subsection and who have agreed in writing not to disclose such information;

35 (3) May receive documents, materials or information, including otherwise confidential and
36 privileged documents, materials, or information from the National Association of Insurance
37 Commissioners and its affiliates and subsidiaries and from regulatory and law-enforcement
38 officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged
39 any document, material, or information received with notice or the understanding that it is
40 confidential or privileged under the laws of the jurisdiction that is the source of the document,
41 material or information; and

42 (4) Shall enter into written agreements with the National Association of Insurance
43 Commissioners governing sharing and use of information provided pursuant to this article
44 consistent with this subsection that:

45 (A) Specify procedures and protocols regarding the confidentiality and security of
46 information shared with the National Association of Insurance Commissioners and its affiliates
47 and subsidiaries pursuant to this article, including procedures and protocols for sharing by the
48 National Association of Insurance Commissioners with other state, federal, or international
49 regulators;

50 (B) Specify that ownership of information shared with the National Association of
51 Insurance Commissioners and its affiliates and subsidiaries pursuant to this article remains with
52 the commissioner, and the National Association of Insurance Commissioners' use of the
53 information is subject to the direction of the commissioner;

54 (C) Require prompt notice to be given to an insurer whose confidential information in the
55 possession of the National Association of Insurance Commissioners pursuant to this article is

56 subject to a request or subpoena to the National Association of Insurance Commissioners for
57 disclosure or production; and

58 (D) Require the National Association of Insurance Commissioners and its affiliates and
59 subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which
60 the National Association of Insurance Commissioners and its affiliates and subsidiaries may be
61 required to disclose confidential information about the insurer shared with the National
62 Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article.

63 (d) The sharing of information by the commissioner pursuant to this article does not
64 constitute a delegation of regulatory authority, and the commissioner is solely responsible for the
65 administration, execution and enforcement of the provisions of this article.

66 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
67 materials or information occurs as a result of disclosure to the commissioner under this section
68 or as a result of sharing as authorized in subsection (c) of this section.

69 (f) Documents, materials, or other information in the possession or control of the National
70 Association of Insurance Commissioners pursuant to this article is confidential by law and
71 privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not subject to
72 subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

NOTE: The purpose of this bill is to provide authority to a designated state insurance commissioner to act as a group-wide supervisor for an internationally active insurance group. For a holding company group to be considered an internationally active insurance group, it must meet various criteria, including premiums written in at least three countries, at least 10% of premiums written outside the United States, and total assets greater than \$50 billion or total premiums greater than \$10 billion. The legislation is needed for the State of West Virginia to remain accredited with the National Association of Insurance Commissioners.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.