

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3381

**FISCAL
NOTE**

By Delegates Hall and Hott

[By Request of the Insurance Commission]

[Introduced March 14, 2025; referred to the
Committee on Finance]

1 A BILL to amend and reenact §33-27-2, §33-27-4, §33-27-5, §33-27-6a, §33-27-7, and §33-27-8
2 of the Code of West Virginia, 1931, as amended, relating to insurance holding company
3 systems; defining terms; requiring an insurance company that is a member of an insurance
4 holding company system to annually file a group capital calculation with the lead state
5 insurance commissioner of the insurance holding company system and providing
6 exemptions thereto; requiring the filing with the lead state insurance commissioner of the
7 results from a liquidity stress test by an insurance company that is a member of an
8 insurance holding company system and is scoped into the National Association of
9 Insurance Commissioners' liquidity stress test framework; requiring that a liquidity stress
10 test comply with the National Association of Insurance Commissioners' liquidity stress test
11 framework's instructions and reporting templates; permitting the insurance commissioner
12 to require an insurance company that is in a hazardous financial condition or a condition
13 that would be grounds for supervision, conservation, or a delinquency proceeding to
14 secure and maintain either a deposit to be held by the commissioner or a bond at the
15 insurer's discretion for the protection of the insurer while in an insurance holding company
16 system; providing that all records and data of an insurance company being held by an
17 affiliate of the insurer is to remain the property of the insurer and subject to the insurer's
18 control; providing that an affiliate of a domestic insurance company is subject to the
19 insurance commissioner's jurisdiction and authority with respect to any supervision,
20 seizure, conservatorship, or receivership proceedings of the insurer; making an insurance
21 company that is a member of an insurance holding company system liable to the insurance
22 commissioner for the reasonable expenses incurred by the commissioner for his or her
23 participation in a supervisory college; requiring the insurance commissioner to keep
24 information related to a group capital calculation and liquidity stress test confidential; and
25 prohibiting the storing of certain insurance holding company system information shared by
26 the insurance commissioner with the National Association of Insurance Commissioners.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2. Definitions.

As used in this article:

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

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

~~(c)~~ "Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by §33-27-4(k) of this code that control does not exist in fact. The commissioner may determine after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.

~~(d)~~ "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level, as set forth in §33-40-1 *et seq.* of this code, or

would cause the insurer to be in hazardous financial condition, as set forth in §33-34-1 *et seq.* of this code.

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

"Group capital calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(f)"Insurance holding company system" means a system that consists of two or more affiliated persons, one or more of which is an insurer.

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

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

(1) Premiums written in at least three countries;

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

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

"NAIC" means the National Association of Insurance Commissioners.

"NAIC liquidity stress test framework" means a NAIC publication that includes a history of

the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, such scope criteria, instructions, and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

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

"Scope criteria," as detailed in the NAIC liquidity stress test framework, means the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for that data year.

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

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

(l) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

§33-27-4. Registration of insurers; information and form required; summary of changes to registration statement; materiality; reporting of dividends to shareholders; information to insurers; termination of registration; consolidated filing; alternative registration; exemptions; disclaimer; enterprise risk filing; group capital calculation filing; liquidity stress test filing; violations.

1 (a) *Registration.* – (1) Every insurer which is authorized to do business in this state and
2 which is a member of an insurance holding company system shall register with the commissioner,
3 except a foreign insurer subject to disclosure requirements and standards adopted by statute or
4 regulation in the jurisdiction of its domicile which are substantially similar to those contained in this
5 ~~section, subsections (a), (b) and (c), section five of this article, and either subsection (d), section~~
6 ~~five of this article~~

7 (A) This section;

8 (B) §33-27-5(a), §33-27-5(b), and §33-27-5(c) of this code; and

9 (C) Either §33-27-5(d) of this code or has a provision such as the following: "Each
10 registered insurer shall keep current the information required to be disclosed in its registration
11 statement by reporting all material changes or additions within fifteen days after the end of the
12 month in which it learns of each change or addition."

13 (2) Any insurer which is subject to registration under this section shall register within 15
14 days after it becomes subject to registration and annually thereafter by June 1 of each year for the
15 previous calendar year, unless the commissioner for good cause shown extends the time for
16 registration. The commissioner may require any authorized insurer which is a member of a an
17 insurance holding company system which is not subject to registration under this section to furnish
18 a copy of the registration statement, the summary described in ~~subsection (c)~~ §33-27-4(c) of this
19 ~~section~~ code, or other information filed by such insurance company with the insurance regulatory
20 authority of domiciliary jurisdiction.

21 (b) *Information and form required.* — Every insurer subject to registration shall file a
22 registration statement with the commissioner on a form and in a format prescribed by the ~~National~~
23 ~~Association of Insurance Commissioners~~ NAIC, which shall contain the following current
24 information:

25 (1) The capital structure, general financial condition, ownership and management of the
26 insurer, and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

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

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

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

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

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

(E) All management ~~and~~ agreements, service contracts, and all cost-sharing arrangements;

(F) All reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation statements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

(7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) Any other information required by the commissioner by rule.

(c) *Summary of changes to registration statement.* -- All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) *Materiality.* -- Information need not be disclosed on the registration statement filed pursuant to ~~subsection (b) of this section §33-27-4(b)~~ of this code if such information is not material for the purpose of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, ~~or~~ investments, or guarantees involving ~~one-half~~ one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for the purposes of the group capital calculation or the liquidity stress test framework.

(e) *Reporting of dividends to shareholders.* -- Subject to §33-27-5(c) of this code, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within 15 business days following the declaration thereof.

(f) *Information to insurers.* -- Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, when such information is reasonably necessary to enable the insurer to comply with the provisions of this article.

79 (g) *Termination of registration.* -- The commissioner shall terminate the registration of any
80 insurer which demonstrates that it no longer is a member of an insurance holding company
81 system.

82 (h) *Consolidated filing.* -- The commissioner may require or allow two or more affiliated
83 insurers subject to registration hereunder to file a consolidated registration statement or
84 consolidated reports amending their consolidated registration statement or their individual
85 registration statements.

86 (i) *Alternative registration.* -- The commissioner may allow an insurer which is authorized
87 to do business in this state and which is a part of an insurance holding company system to register
88 on behalf of any affiliated insurer which is required to register under §33-27-4(a) of this code and to
89 file all information and material required to be filed under this section.

90 (j) *Exemptions.* -- The provisions of this section shall not apply to any insurer, information,
91 or transaction if and to the extent that the commissioner by rule or order shall exempt the same
92 from the provisions of this section.

93 (k) *Disclaimer.* -- Any person may file with the commissioner a disclaimer of affiliation with
94 any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance
95 holding company system. The disclaimer shall fully disclose all material relationships and bases
96 for affiliation between the person and the insurer as well as the basis for disclaiming such
97 affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the
98 commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the
99 disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an
100 administrative hearing, which shall be granted, and the commissioner shall disallow such a
101 disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and
102 after making specific findings of fact to support such disallowance. The disclaiming party shall be
103 relieved of its duty to register under this section if approval of the disclaimer has been granted by
104 the commissioner, or if the disclaimer is deemed to have been approved.

(I) *Enterprise Risk Filing Filings.* —

(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the ~~National Association of Insurance Commissioners~~ NAIC.

(2) Group Capital Calculation.

(A) Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. The following insurance holding company systems are exempt from filing the group capital calculation:

(i) An insurance holding company system that has only one insurer within its holding company structure, that only writes business, and is only licensed, in its domestic state, and assumes no business from any other insurer;

(ii) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(iii) An insurance holding company system whose non-United States group-wide supervisor is located within a reciprocal jurisdiction as described in §33-4-15a(b)(2)(F) of this code that recognizes the United States state regulatory approach to group supervision and group capital; and

(iv) An insurance holding company system:

(I) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the Financial Analysis Handbook adopted by the NAIC; and

(II) Whose non-United States group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in rule, the group capital calculation as the world-wide group capital assessment for United States insurance groups who operate in that jurisdiction.

(B) Notwithstanding the provisions of §33-27-4(l)(2)(A)(iii) and §33-27-4(l)(2)(A)(iv) of this code, a lead state commissioner shall require the group capital calculation for United States operations of any non-United States based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(C) Notwithstanding the exemptions from filing the group capital calculation stated in §33-27-4(l)(2)(A) of this code, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation.

(D) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital

calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(3) Liquidity Stress Test.

(A) The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC liquidity stress test framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

(i) The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the NAIC Financial Stability Task Force or its successor. Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC liquidity stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the framework for that data year.

(l) Regulators wish to avoid having insurers scoped in and out of the NAIC liquidity stress test framework on a frequent basis. The lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, will assess this concern as part of the determination for an insurer.

(ii) The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the NAIC liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the NAIC Financial Stability Task Force or its successor, provided within the framework.

(m) *Violations.* -- The failure to file a registration statement, or any summary of the registration statement, or enterprise risk filing ~~thereto~~ required by this section within the time specified for such filing shall be a violation of this section.

§33-27-5. Standards; adequacy of surplus; dividends and other distributions; notice of amendments or modifications; management of domestic insurers subject to registration.

(a) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(1) The terms shall be fair and reasonable;

(2) Agreements for cost-sharing services and management shall include such provisions as required by rule;

(3) Charges or fees for services performed shall be reasonable;

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

(5) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; ~~and~~

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

(7) If an insurer subject to this article is deemed by the commissioner to be in a hazardous

17 financial condition as defined by §33-34-3a of this code or a condition that would be grounds for
18 supervision, conservation, or a delinquency proceeding, then the commissioner may require the
19 insurer to secure and maintain either a deposit, held by the commissioner, or a bond, as
20 determined by the insurer at the insurer's discretion, for the protection of the insurer for the
21 duration of the contract(s) or agreement(s), or the existence of the condition for which the
22 commissioner required the deposit or the bond.

23 (A) In determining whether a deposit or a bond is required, the commissioner should
24 consider whether concerns exist with respect to the affiliated person's ability to fulfill the
25 contract(s) or agreement(s) if the insurer were to be put into liquidation. Once the insurer is
26 deemed to be in a hazardous financial condition or a condition that would be grounds for
27 supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the
28 commissioner has discretion to determine the amount of the deposit or bond, not to exceed the
29 value of the contract(s) or agreement(s) in any one year, and whether such deposit or bond should
30 be required for a single contract, multiple contracts, or a contract only with a specific person(s);

31 (8) All records and data of the insurer held by an affiliate are and remain the property of the
32 insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable
33 of segregation, at no additional cost to the insurer, from all other persons' records and data. This
34 includes all records and data that are otherwise the property of the insurer, in whatever form
35 maintained, including, but not limited to, claims and claim files, policyholder lists, application files,
36 litigation files, premium records, rate books, underwriting manuals, personnel records, financial
37 records, or similar records within the possession, custody, or control of the affiliate. At the request
38 of the insurer, the affiliate shall provide that the receiver can obtain a complete set of all records of
39 any type that pertain to the insurer's business; obtain access to the operating systems on which
40 the data is maintained; obtain the software that runs those systems either through assumption of
41 licensing agreements or otherwise; and restrict the use of the data by the affiliate if it is not
42 operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other

encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement; and

(9) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subject to §33-10-1 et seq. of this code.

(b) *Adequacy of surplus.* — For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

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

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

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

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

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

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

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

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

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

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

(c) *Dividends and other distributions.* — (1) No domestic insurer may pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty days after the commissioner has received notice of the declaration thereof and has not within that period disapproved such payment; or

(B) The commissioner has approved that payment within the 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the lesser of:

(A) Ten percent of such insurer's surplus as regards policyholders as of December 31, next preceding; or

(B) The net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending December 31, next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) In determining whether a dividend or distribution is extraordinary for purposes of this subsection, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

~~(3)~~ (4) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until:

(A) The commissioner has approved the payment of such dividend or distribution; or

(B) The commissioner has not disapproved such payment within the 30-day period referred to above.

(d) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements

previously filed pursuant to this section, that are subject to any materiality standards contained in subdivisions ~~(1) through (5) of this subsection~~ §33-27-5(d)(1) through §33-27-5(d)(7) of this code, may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period: *Provided*, That nothing contained in this subsection shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

(1) Sales, purchases, exchanges, loans, ~~or~~ extensions of credit, ~~guarantees or investments~~ provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders as of December 31, next preceding; and

(B) With respect to life insurers, three percent of the insurer's admitted assets as of December 31, next preceding;

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided the transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders ~~each~~ as of December 31, next preceding;

(B) With respect to life insurers, three percent of the insurer's admitted assets as of December 31, next preceding;

(3) Reinsurance agreements or modifications thereto, including:

(A) All reinsurance pooling agreements; and

(B) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of December 31, next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(4) All management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements;

(5) Guarantees when made by a domestic insurer; *Provided*, That a guarantee that is quantifiable as to amount is not subject to the notice requirements of this ~~subdivision~~ subsection unless it exceeds the lesser of ~~one-half~~ one-half of one percent of the insurer's admitted assets or 10 percent of surplus as regards policyholders as of December 31, next preceding: *Provided*, *however*, That all guarantees that are not quantifiable as to amount are subject to the notice requirements of this ~~subdivision~~ subsection;

(6) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to §33-27-2a of this code or authorized under any other section of this chapter, or in nonsubsidiary insurance affiliates that are subject to the provisions of this article, are exempt from this requirement; and

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

(e) A domestic insurer may not enter into transactions which are part of a plan or series of

like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any 12-month period for that purpose, he or she may exercise his or her authority under §33-27-9 of this code.

(f) The commissioner, in reviewing transactions pursuant to §33-27-5(d) of this code, shall consider whether the transactions comply with the standards set forth in §33-27-5(a) of this code and whether they may adversely affect the interests of policyholders.

(g) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds 10 percent of such corporation's voting securities.

(h) *Management of domestic insurers subject to registration.* -- (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with the provisions of this article.

(2) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperatively, or jointly using personnel, property, or services with one or more other persons under arrangements meeting the standards of §33-27-5(a) of this code.

(3) Not less than ~~one-third~~ one-third of the directors of a domestic insurer, and not less than ~~one-third~~ one-third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of §33-27-5(h)(3) and §33-27-5(h)(4) of this code do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of such subdivisions with respect to such controlling entity.

(6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300 million. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

(i) Supervision, seizure, conservatorship, or receivership proceedings. – (1) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to §33-27-5(d)(4) of this code shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to §33-10-1 et seq. and §33-34-1 et seq. of this code for the purpose of interpreting, enforcing, and overseeing the affiliate's

obligations under the agreement or contract to perform services for the insurer that:

(A) Are an integral part of the insurer's operations, including but not limited to, management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or

(B) Are essential to the insurer's ability to fulfill its obligations under insurance policies.

(2) The commissioner may require that an agreement or contract pursuant to §33-27-5(d)(4) of this code for the provision of services described in §33-27-5(i)(1)(A) and §33-27-5(i)(1)(B) of this code specify that the affiliate consents to the jurisdiction as set forth in this subsection.

§33-27-6a. Supervisory Colleges; power of commissioner; expenses; agreements.

(a) *Power of Commissioner.* — With respect to any insurer registered under §33-27-4 of this code, and in accordance with §33-27-6a(c) of this code, the commissioner may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

(1) Initiating the establishment of a supervisory college;

(2) Clarifying the membership and participation of other supervisors in the supervisory college;

(3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

(4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and

(5) Establishing a crisis management plan.

(b) *Expenses.* — Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in

17 accordance with §33-27-6a(c) of this code, including reasonable travel expenses. For purposes of
18 this section, a supervisory college may be convened as either a temporary or permanent forum for
19 communication and cooperation between the regulators charged with the supervision of the
20 insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for
21 the payment of such expenses.

22 ~~(b)~~ (c) *Supervisory College.* — In order to assess the business strategy, financial position,
23 legal and regulatory position, risk exposure, risk management, and governance processes, and as
24 part of the examination of individual insurers in accordance with §33-27-6 of this code, the
25 commissioner may participate in a supervisory college with other regulators charged with
26 supervision of the insurer or its affiliates, including other state, federal, and international regulatory
27 agencies. The commissioner may enter into agreements in accordance with §33-27-7(c) of this
28 code providing the basis for cooperation between the commissioner and the other regulatory
29 agencies, and the activities of the supervisory college: *Provided*, That this section may not be
30 construed as delegating to the supervisory college the authority of the commissioner to regulate or
31 supervise the insurer or its affiliates within its jurisdiction.

§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)(12) or §33-27-
5 3(b)(13) of this code; §33-27-4 of this code; §33-27-5 of this code; or §33-27-6b of this code is
6 confidential by law and privileged, is exempt from disclosure pursuant to chapter 29-~~b~~ 29B of this
7 code, is not open to public inspection, is not subject to subpoena, is not subject to discovery or
8 admissible in evidence in any criminal, private civil, or administrative action, and is not subject to
9 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

brought as part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in any manner as he or she may consider appropriate.

(1) For purposes of the information reported and provided to the commissioner pursuant to §33-27-4(l)(2) of this code, the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any United States group-wide supervisor.

(2) For purposes of the information reported and provided to the commissioner pursuant to §33-27-4(l)(3) of this code, the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United States group-wide supervisors.

(b) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this article may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to §33-27-7(a) of this code.

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

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to §33-27-7(a) of this code, with other state, federal, and international regulatory agencies, with the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries, with any third-party consultants

37 designated by the commissioner, and with state, federal, and international law enforcement
38 authorities, including members of any supervisory college described in §33-27-6a of this code, if
39 the recipient agrees in writing to maintain the confidentiality and privileged status of the document,
40 material, or other information, and has verified in writing the legal authority to maintain
41 confidentiality;

42 (2) Notwithstanding ~~subdivision (1) of this subsection~~ §33-27-7(c)(1) of this code, the
43 commissioner may only share confidential and privileged documents, material, or information
44 reported pursuant to ~~§33-27-4(A)~~ §33-27-4(I)(1) of this code, with commissioners of states having
45 statutes or regulations substantially similar to ~~subdivision (1) of this subsection~~ §33-27-7(a) of this
46 code and who have agreed in writing not to disclose such information;

47 (3) May receive documents, materials, or information, including otherwise confidential and
48 privileged documents, materials, or information from the ~~National Association of Insurance~~
49 ~~Commissioners~~ NAIC and its affiliates and subsidiaries and from regulatory and law-enforcement
50 officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged
51 any document, material, or information received with notice or the understanding that it is
52 confidential or privileged under the laws of the jurisdiction that is the source of the document,
53 material, or information; and

54 (4) Shall enter into written agreements with the ~~National Association of Insurance~~
55 ~~Commissioners~~ NAIC and any third-party consultant designated by the commissioner governing
56 sharing and use of information provided pursuant to this article consistent with this subsection that:

57 (A) Specify procedures and protocols regarding the confidentiality and security of
58 information shared with the ~~National Association of Insurance Commissioners~~ NAIC and its
59 affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to
60 this article, including procedures and protocols for sharing by the ~~National Association of~~
61 ~~Insurance Commissioners~~ NAIC with other state, federal, or international regulators. The
62 agreement shall provide that the recipient agrees in writing to maintain the confidentiality and

63 privileged status of the documents, materials, or other information, and has verified in writing the
64 legal authority to maintain such confidentiality;

65 (B) Specify that ownership of information shared with the ~~National Association of~~
66 ~~Insurance Commissioners~~ NAIC and its affiliates and subsidiaries or a third-party consultant
67 designated by the commissioner pursuant to this article remains with the commissioner, and the
68 ~~National Association of Insurance Commissioners'~~ NAIC's or third-party consultant's use of the
69 information is subject to the direction of the commissioner;

70 (C) Excluding documents, material, or information reported pursuant to §33-27-4(l)(3) of
71 this code, prohibit the NAIC or a third-party consultant designated by the commissioner from
72 storing the information shared pursuant to this article in a permanent database after the underlying
73 analysis is completed;

74 ~~(G) (D)~~ Require prompt notice to be given to an insurer whose confidential information in
75 the possession of the ~~National Association of Insurance Commissioners~~ NAIC or a third-party
76 consultant designated by the commissioner pursuant to this article is subject to a request or
77 subpoena to the ~~National Association of Insurance Commissioners~~ NAIC or third-party consultant
78 for disclosure or production; and

79 ~~(D) (E)~~ Require the ~~National Association of Insurance Commissioners~~ NAIC and its
80 affiliates and subsidiaries or a third-party consultant designated by the commissioner to consent to
81 intervention by an insurer in any judicial or administrative action in which the ~~National Association~~
82 ~~of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries or third-party consultant may
83 be required to disclose confidential information about the insurer shared with the ~~National~~
84 ~~Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries or third-party
85 consultant pursuant to this article.

86 (F) For documents, material, or information reported pursuant to §33-27-4(l)(3) of this
87 code, in the case of an agreement involving a third-party consultant designated by the
88 commissioner, provide for notification of the identity of the consultant to the applicable insurers.

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

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in §33-27-7(c) of this code.

(f) Documents, materials, or other information in the possession or control of the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

(g) The group capital calculation and resulting group capital ratio required under §33-27-4(l)(2) of this code and the liquidity stress test along with its results and supporting disclosures required under §33-27-4(l)(3) of this code are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this article, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited: *Provided*, That if any materially false

115 statement with respect to the group capital calculation, resulting group capital ratio, an
116 inappropriate comparison of any amount to an insurer's or insurance group's group capital
117 calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the
118 liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance
119 group's liquidity stress test result or supporting disclosures is published in any written publication
120 and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such
121 statement or the inappropriateness, as the case may be, then the insurer may publish
122 announcements in a written publication if the sole purpose of the announcement is to rebut the
123 materially false statement.

§33-27-8. Injunctions; prohibitions against voting securities; sequestration of voting securities.

1 (a) *Injunctions.* -- Whenever it appears to the commissioner that any ~~person~~ insurer or any
2 director, officer, employee, or agent thereof has committed or is about to commit a violation of this
3 article or of any rule ~~regulation~~ or order issued by the commissioner hereunder, the commissioner
4 may apply to the circuit court for the county in which the principal officer of the insurer or, if the
5 insurer has no office in this state, then to the Circuit Court of Kanawha County for an order
6 enjoining such ~~person~~ insurer or such director, officer, employee, or agent thereof from violating or
7 continuing to violate this chapter article or any such rule ~~regulation~~ or order, and for such other
8 equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors,
9 and shareholders or the public may require.

10 (b) *Voting of securities: when prohibited.* -- No security which is the subject of any
11 agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in
12 contravention of the provisions of this article or of any rule ~~regulation~~ or order issued by the
13 commissioner hereunder may be voted at any shareholders' meeting, or may be counted for
14 quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of
15 shares may be taken as though such securities were not issued and outstanding; but no action

16 taken at any such meeting shall be invalidated by the voting of such securities, unless the action
17 would materially affect control of the insurer or unless the courts of this state have so ordered. If an
18 insurer or the commissioner has reason to believe that any security of the insurer has been or is
19 about to be acquired in contravention of the provisions of this article or of any rule ~~regulation~~ or
20 order issued by the commissioner hereunder, the insurer or the commissioner may apply to the
21 circuit court for the county in which the insurer has its principle place of business to enjoin any
22 offer, request, invitation, agreement, or acquisition made in contravention of ~~section four of this~~
23 ~~article §33-27-3 of this code~~, or any rule ~~regulation~~ or order issued by the commissioner
24 thereunder to enjoin the voting of any security so acquired, to void any vote of such security
25 already cast at any meeting of shareholders, and for such other equitable relief as the nature of the
26 case and the interests of the insurer's policyholders, creditors, and shareholders or the public may
27 require.

28 (c) *Sequestration of voting securities.* -- In any case where a person has acquired or is
29 proposing to acquire any voting securities in violation of this article or any rule ~~regulation~~ or order
30 issued by the commissioner hereunder, the circuit court may, on such notice as the court deems
31 appropriate, upon the application of the insurer or the commissioner seize or sequester any voting
32 securities of the insurer owned directly or indirectly by such person, and issue such orders with
33 respect thereto as may be appropriate to effectuate the provisions of this article.

34 (d) Notwithstanding any other provisions of law, for the purposes of this article, the situs of
35 the ownership of the securities of domestic insurers shall be deemed to be in this state

NOTE: The purpose of this bill is to implement, with respect to an insurance company that is a member of an insurance holding company system, a group capital calculation and a liquidity stress test for the purpose of enhanced supervision by the Insurance Commissioner. The bill also requires efficient coordination between an insurance company and its affiliate and requires the continuation of essential services by an insurer's affiliate in the event of insolvency. 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.