

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

FILED

APR 10 3 17 PM '95

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.

AGENCY: Insurance Commissioner TITLE NUMBER: 114

AMENDMENT TO AN EXISTING RULE: YES___, NOxx

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 40

TITLE OF RULE BEING PROPOSED: Credit for Reinsurance

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 131

SECTION 64-7-4 (c), PASSED ON March 11, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 14, 1995

B. Keith Huffman
General Counsel

AUTHORIZED SIGNATURE



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

April 10, 1995.

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, WV 25305

Dear Ms. Cooper:

Attached for filing with your office is the "final filing" form for the rule Series 40 titled "Credit for Reinsurance." This rule was authorized in Senate Bill 131 and passed by the Legislature on March 11, 1995.

We are also providing your office with a computer disc containing the aforementioned rule and a hard copy of the promulgation history of that rule. The filing date and effective date have already been inserted onto the computer disc.

If you have any questions about the enclosed forms or the computer disc, please do not hesitate to call me or my secretary, Carla Savage.

Sincerely,

A handwritten signature in cursive script that reads "B. Keith Huffman".

B. Keith Huffman
General Counsel

BKH/cjs
Attachment

PROMULGATION HISTORY

West Virginia Insurance Commission
Credit for Reinsurance

Title 114 Series 40

7/11/94	Notice of Comment Period Filed on Proposed Rule
8/10/94	Last Date Comments Were Received
8/12/94	Notice of Agency Approval of a Proposed Rule Filed
11/01/94	Date Reviewed and Analysis prepared by Legislative Rule-Making Review Committee
11/23/94	Date Modified and Approved Rule Filed
4/10/95	Date of Final Filing of Legislative Rule
4/14/95	Effective Date of Rule

FILED

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TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 40
CREDIT FOR REINSURANCE

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114CSR40

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 40
CREDIT FOR REINSURANCE

§ 114-40-1. Authority

1.1. Scope. -- This legislative rule establishes the rules, procedural requirements and the form required which the commissioner considers necessary to carry out the provision of West Virginia Code § 33-4-15a dealing with credit for reinsurance.

1.2. Authority. -- West Virginia Code § 33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

§ 114-40-2. Purpose

The purpose of this rule is to set forth rules and procedural requirements which the commissioner considers necessary to carry out the provisions of West Virginia Code § 33-4-15a. The actions and information required by this rule are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

§ 114-40-3. Credit for Reinsurance.

3.1. The commissioner shall allow a credit for reinsurance to a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of Section 4, Section 5, Section 6, Section 7, or Section 8 of this rule.

3.2. A foreign ceding insurer or an alien ceding insurer transacting insurance in West Virginia that is domiciled in a jurisdiction that employs standards regarding credit for reinsurance that are not substantially similar to those applicable under West Virginia Code § 33-4-1 et seq. shall be allowed a credit for reinsurance by the commissioner as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of Section 4, Section 5, Section 6, Section 7, or Section 8 of this rule.

§ 114-40-4. Credit for Reinsurance - Reinsurer Licensed in this State

Pursuant to West Virginia Code § 33-4-15a(c)(1), the commissioner shall allow credit for reinsurance ceded by an insurer to assuming insurers which were licensed in this state as of the date of the ceding insurer's statutory financial statement.

§ 114-40-5. Credit for Reinsurance - Accredited Reinsurers

5.1. Pursuant to West Virginia Code § 33-4-15a(c)(2), the commissioner shall allow credit for reinsurance ceded by an insurer to an assuming insurer which is accredited as a reinsurer in this state prior to the effective date of the contract and as of the date of the ceding insurer's statutory financial statement. An accredited reinsurer is one which:

a. Files a properly executed Form AR-1 (attached as Appendix A to this rule) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records, pursuant to West Virginia Code § 33-2-9;

b. Files with the commissioner a certified copy of a letter or a certificate of authority or of compliance as evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

c. Files annually, on or before the first day of March its annual statement, a copy of its most recent audited financial statement and remits a One Hundred Dollar (\$100.00) annual statement filing fee to the commissioner. The annual statement shall be a copy of the statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance;

d. Has applied to the commissioner, paid a One Hundred Dollar (\$100.00) application fee and maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within ninety (90) days of its application or, in the case of companies with a surplus as regards policyholders of less than \$20,000,000, whose accreditation has been approved by the commissioner. A letter of

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accreditation issued by the commissioner is evidence of approval;
and

e. Has filed any other information the commissioner requests to determine that the assuming insurer qualifies for accreditation under this section.

5.2. If the commissioner determines that the assuming insurer has failed to meet or maintain any of the qualifications required by this section, he or she may upon written notice and hearing revoke the accreditation. No credit shall be allowed a ceding insurer with respect to reinsurance ceded if the assuming insurer's accreditation has been denied or revoked by the commissioner after notice and hearing.

§ 114-40-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State

6.1. Pursuant to West Virginia Code § 33-4-15a(c)(3), the commissioner shall allow credit for reinsurance ceded by an insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

a. Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under West Virginia Code § 33-4-15a and this rule;

b. Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

c. Files a properly executed Form AR-1 (attached as Appendix A to this regulation) with the commissioner as evidence of its submission to this state's authority to examine its books and records, pursuant to West Virginia Code § 33-2-9.

6.2. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

6.3. As used in this section, "substantially similar" standards means credit for reinsurance standards which the

commissioner determines equal or exceed the standards of West Virginia Code § 33-4-15a and this rule.

§ 114-40-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds

7.1. Pursuant to West Virginia Code § 33-4-15a(c)(4), the commissioner shall allow credit for reinsurance ceded by a ceding insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed in this section in a qualified United States financial institution as defined in West Virginia Code § 33-4-5a(f), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

7.2. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trustee surplus of not less than \$20,000,000.

b. The trust fund for a group, including incorporated and individual unincorporated underwriters shall consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.

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c. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group. In addition, the group shall maintain a joint trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall file a properly executed Form AR-1 (attached as Appendix A to this rule) as evidence of the submission to this state's authority to examine the books and records, pursuant to West Virginia Code § 33-2-9, of any of its members and shall certify that any member examined will bear the expense of the examination. The group shall make available to the commissioner annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group.

7.3. The trust shall be established in a form approved by the commissioner and shall comply with West Virginia Code § 33-4-15a(d) and this section. The trust instrument shall provide that:

a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest;

c. The trust shall be subject to examination as determined by the commissioner;

d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust;

e. The trustees of the trust shall report no later than February 28 of each year to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31; and

f. Any amendment to the trust shall not be effective unless reviewed and approved in advance by the commissioner.

§ 114-40-8. Credit for Reinsurance Required by Law

Pursuant to West Virginia Code § 33-4-15a(c)(5), the commissioner shall allow credit for reinsurance ceded by a ceding insurer to an assuming insurer not meeting the requirements of West Virginia Code §§ 33-4-15a(c)(1); 33-4-15a(c)(2); 33-4-15a(c)(3); and 33-4-15a(c)(4), but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

§ 114-40-9. Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer

9.1. Pursuant to West Virginia Code § 33-4-15a(e), the commissioner shall allow a reduction from liability for reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of West Virginia Code § 33-4-15a(c) in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder. The security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in West Virginia Code § 33-4-15a(f). This security may be in the form of any of the following:

- a. Cash;
- b. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets; or

c. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in West Virginia Code § 33-4-15a(f), effective no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

9.2. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to Paragraphs a, b, c, of Subsection 1 of this rule shall be allowed only when the requirements of Sections 10, 11 or 12 of this rule are satisfied.

§ 114-40-10. Trust Agreements Qualified under Section 9

10.1. As used in this section:

a. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including a conservator, rehabilitator or liquidator).

b. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

c. "Obligations", as used in Paragraph k, Subsection 2 of this Section, means:

A. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

B. Reserves for reinsured losses reported and outstanding;

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C. Reserves for reinsured losses incurred but not reported; and

D. Reserves for allocated reinsured loss expenses and unearned premiums.

10.2. Required conditions.

a. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in West Virginia Code § 33-4-15a(f).

b. The trust agreement shall create a trust account into which assets shall be deposited.

c. All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the Commissioner's permission to use a foreign branch office of the bank as trustee for trust agreements established pursuant to this section. If the Commissioner approves the use of a foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in Subparagraph A, of Paragraph d, of Subsection 2 of this section must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

d. The trust agreement shall provide that:

A. The beneficiary has the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

B. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

C. It is not subject to any conditions or qualifications outside of the trust agreement; and

D. It shall not contain references to any other agreements or documents except as provided for under Subparagraph D, Paragraph K of this subsection.

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e. The trust agreement shall be established for the sole benefit of the beneficiary.

f. The trust agreement shall require the trustee to:

A. Receive assets and hold all assets in a safe place;

B. Determine that all assets are in a form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate the assets, without consent or signature from the grantor or any other person or entity;

C. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

D. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

E. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

F. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw the asset upon condition that the proceeds are paid into the trust account.

g. The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

h. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

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i. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

j. The trust agreement shall provide that the trustee is liable for its own negligence, willful misconduct or lack of good faith.

k. Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, a trust agreement may, notwithstanding any other conditions in this rule, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

A. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

B. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred and two percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

C. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in West Virginia Code § 33-4-15a(f) apart from its general assets, in trust for such uses and purposes specified in Subparagraphs A and B of Paragraph k of this Subsection as may remain executory after the withdrawal and for any period after the termination date.

l. The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the

provisions required by Subparagraph B of Paragraph a of Subsection 4, so long as these required conditions are included in the trust agreement.

10.3. Permitted conditions.

a. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after receipt of the notice by the beneficiary and grantor and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after receipt of the notice by the trustee and the beneficiary. No resignation or removal is effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

b. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. The trustee shall promptly forward to the grantor, or deposit in a separate account established in the grantor's name, any interest or dividends received by the trustee.

c. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subparagraph B of Paragraph a of Subsection 4 of this section.

d. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee receiving other specified assets, prior to or simultaneously with the transfer.

e. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

10.4. Additional conditions applicable to reinsurance agreements.

a. A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

A. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;

B. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by Chapter 33 of the West Virginia Code or any combination of the above, provided that the investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including them in the reinsurance agreement;

C. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares; obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

D. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

E. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its

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successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(a). To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

(b). To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(c). To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and

(d). To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

b. The reinsurance agreement may also contain provisions that:

A. Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(a). The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

(b). After withdrawal and transfer, the market value of the trust account is no less than one hundred and two percent (102%) of the required amount.

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The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

B. Provide for:

(a). The return of any amount withdrawn in excess of the actual amounts required for Parts (a), (b) and (c) of Subparagraph E of Paragraph a of Subsection 4 of this Section, or in the case of Part (d) of Subparagraph E of Paragraph a of this Subsection, any amounts that are subsequently determined not to be due; and

(b). Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Part (c) of Subparagraph E of Paragraph a of this Subsection.

C. Permit the award by any arbitration panel or court of competent jurisdiction of:

(a). Interest at a rate different from that provided in Part (b) of Subparagraph B of Paragraph b of this Subsection,

(b). Court or arbitration costs,

(c). Attorney's fees, and

(d). Any other reasonable expenses.

c. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the commissioner in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but the reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

d. Existing agreements. Notwithstanding the effective date of this rule, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 1993, will continue to be acceptable until the expiration or renewal date of the

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agreement, at which time the agreement will have to be in full compliance with this rule for the trust agreement to be acceptable.

e. The failure of any trust agreement to specifically identify the beneficiary as defined in Subsection 1 of this section shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

§ 114-40-11. Letters of Credit Qualified under Section 9

11.1. The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in West Virginia Code § 33-4-15a(f). The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in Paragraph a, Subsection 9 of this Section. As used in this section, "beneficiary" means the ceding insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including a conservator, rehabilitator or liquidator).

11.2. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

11.3. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement.

11.4. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period

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of no less than thirty (30) days' notice prior to the expiration date or nonrenewal.

11.5. The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and all drafts drawn under the letter of credit shall be presentable at an office in the United States of a qualified United States financial institution.

11.6. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

11.7. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to West Virginia Code § 33-4-15a(f).

11.8. If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in Subsection 7 of this section, then the following additional requirements shall be met:

a. The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

b. The "evergreen clause" shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

11.9. Reinsurance agreement provisions.

a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

A. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

B. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming

Insurance Commissioner
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insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(a). To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;

(b). To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

(c). To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (the amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

(d). To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

C. All of the foregoing provisions of Paragraph a of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

b. Nothing contained in Paragraph a of this subsection precludes the ceding insurer and assuming insurer from providing for:

A. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Part (c), Subparagraph B, Paragraph a of this Subsection; and/or

B. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of Part (d), Subparagraph B, Paragraph a of this Subsection, any amounts that are subsequently determined not to be due.

c. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life,

annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of Subparagraph B, Paragraph a of this Subsection, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.

11.10. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the commissioner unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

§ 114-40-12. Other Security

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States which are subject to withdrawal solely by the ceding insurer and under its exclusive control.

§ 114-40-13. Reinsurance Contract

Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 4, 5, 6, 7, or 9 of this rule or otherwise in compliance with West Virginia Code § 33-4-15a(c) after the adoption of this rule unless the reinsurance agreement:

13.1. Includes a proper insolvency clause pursuant to West Virginia Code § 33-4-15(c); and

13.2. Includes a provision pursuant to West Virginia Code § 33-4-15a(c)(6) whereby an unauthorized assuming insurer has submitted to the jurisdiction of a court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court.

Insurance Commissioner
Legislative Rule
Title 114, Series 40

§ 114-40-14. Contracts Affected

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of West Virginia Code § 33-4-15a and this rule if credit is to be given to the ceding insurer for the reinsurance.

§ 114-40-15. Severability

If any provisions of this rule, or their application to any person or circumstance, is held invalid, that determination shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application, and to that end the provisions of this rule are separable.

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, _____, _____
(name of officer) (title of officer)

of _____,
(name of assuming insurer)

the assuming insurer under a reinsurance agreement(s) with one or
more insurers domiciled in _____,
(name of state)

hereby certify that _____ ("Assuming
(name of assuming insurer)

Insurer"):

1. Submits to the jurisdiction of any court of competent
jurisdiction in _____
(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance
agreement(s), agrees to comply with all requirements necessary to
give such court jurisdiction, and will abide by the final decision
of such court or any appellate court in the event of an appeal.
Nothing in this paragraph constitutes or should be understood to
constitute a waiver of Assuming Insurer's rights to commence an
action in any court of competent jurisdiction in the United States,
to remove an action to a United States District Court, or to seek
a transfer of a case to another court as permitted by the laws of
the United States or of any state in the United States. This
paragraph is not intended to conflict with or override the
obligation of the parties to the reinsurance agreement(s) to
arbitrate their disputes if such an obligation is created in the
agreement(s).

2. Designates the Insurance Commissioner of _____
as its lawful attorney upon
(ceding insurer's state of domicile)

Insurance Commissioner
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Title 114, Series 40

whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of West Virginia to examine its books and records pursuant to West Virginia Code § 33-2-9.

4. Submits with this form a current list of insurers domiciled in _____ reinsured by Assuming Insurer and (ceding insurer's state of domicile) undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____

(name of assuming insurer)

BY:

(name of officer)

(title of officer)

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 27, 1995

B. Keith Huffman
Insurance
2019 Washington St. E.
Charleston, WV 25305-0540

SB 131 authorizing, Title 114, Series 40, Credit for Reinsurance, passed the Legislature on March 11, 1995. It was signed by the Governor on March 23, 1995.

You have sixty (60) days after the Governor signs SB 131, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in SB 131 section 64-7-4(c). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

SENATE BILL NO. 110

(By Senators Manchin, Anderson, Boley, Grubb and Macnaughtan)

[Introduced January 20, 1995; referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary]

114-40

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A BILL to amend and reenact section two, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the insurance commissioner to promulgate legislative rules relating to credit for reinsurance.

Be it enacted by the Legislature of West Virginia:

That section two, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-2. Insurance commissioner.

(a) The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-three, relating to the insurance commissioner (excess line brokers), are

1 authorized.

2 (b) The legislative rules filed in the state register on the
3 eighteenth day of August, one thousand nine hundred eighty-six,
4 modified by the insurance commissioner to meet the objections of the
5 legislative rule-making review committee and refiled in the state
6 register on the twelfth day of December, one thousand nine hundred
7 eighty-six, relating to the insurance commissioner (examiners'
8 compensation, qualification and classification), are authorized.

9 (c) The legislative rules filed in the state register on the
10 twentieth day of February, one thousand nine hundred eighty-seven,
11 relating to the insurance commissioner (West Virginia essential
12 property insurance association), are authorized.

13 (d) The legislative rules filed in the state register on the
14 twenty-ninth day of May, one thousand nine hundred eighty-seven,
15 relating to the insurance commissioner (medical malpractice annual
16 reporting requirements), are authorized.

17 (e) The legislative rules filed in the state register on the
18 thirty-first day of July, one thousand nine hundred eighty-seven,
19 modified by the insurance commissioner to meet the objections of the
20 legislative rule-making review committee and refiled in the state
21 register on the seventh day of November, one thousand nine hundred
22 eighty-seven, relating to the insurance commissioner (medical
23 malpractice loss experience and loss expense reporting requirements),
24 are authorized.

25 (f) The legislative rules filed in the state register on the

1 thirtieth day of November, one thousand nine hundred eighty-eight,
2 modified by the insurance commissioner to meet the objections of the
3 legislative rule-making review committee and refiled in the state
4 register on the twenty-first day of February, one thousand nine
5 hundred eighty-nine, relating to the insurance commissioner
6 (transitional requirements for the conversion of Medicare supplement
7 insurance benefits and premiums to conform to Medicare program
8 revisions), are authorized.

9 (g) The legislative rules filed in the state register on the
10 twenty-sixth day of May, one thousand nine hundred eighty-nine,
11 modified by the insurance commissioner to meet the objections of the
12 legislative rule-making review committee and refiled in the state
13 register on the twenty-eighth day of September, one thousand nine
14 hundred eighty-nine, relating to the insurance commissioner
15 (insurance adjusters), are authorized.

16 (h) The legislative rules filed in the state register on the
17 second day of February, one thousand nine hundred ninety, modified
18 by the insurance commissioner to meet the objections of the
19 legislative rule-making review committee and refiled in the state
20 register on the twenty-ninth day of May, one thousand nine hundred
21 ninety, relating to the insurance commissioner (accident and sickness
22 rate filing), are authorized.

23 (i) The legislative rules filed in the state register on the
24 tenth day of August, one thousand nine hundred ninety, modified by
25 the insurance commissioner to meet the objections of the legislative

1 rule-making review committee and refiled in the state register on the
2 ninth day of October, one thousand nine hundred ninety, relating to
3 the insurance commissioner (group coordination of benefits), are
4 authorized.

5 (j) The legislative rules filed in the state register on the
6 tenth day of August, one thousand nine hundred ninety, modified by
7 the insurance commissioner to meet the objections of the legislative
8 rule-making review committee and refiled in the state register on the
9 seventeenth day of January, one thousand nine hundred ninety-one,
10 relating to the insurance commissioner (AIDS regulations), are
11 authorized.

12 (k) The legislative rules filed in the state register on the
13 third day of December, one thousand nine hundred ninety, relating to
14 the insurance commissioner (health insurance benefits for
15 temporomandibular and craniomandibular disorders), are authorized.

16 (l) The legislative rules filed in the state register on the
17 twelfth day of August, one thousand nine hundred ninety-one, modified
18 by the insurance commissioner to meet the objections of the
19 legislative rule-making review committee and refiled in the state
20 register on the thirteenth day of January, one thousand nine hundred
21 ninety-two, relating to the insurance commissioner (guaranteed loss
22 ratios as applied to individual sickness and accident insurance
23 policies), are authorized.

24 (m) The legislative rules filed in the state register on the
25 ninth day of August, one thousand nine hundred ninety-one, modified

1 by the insurance commissioner to meet the objections of the
2 legislative rule-making review committee and refiled in the state
3 register on the thirteenth day of January, one thousand nine hundred
4 ninety-two, relating to the insurance commissioner (examiners'
5 compensation, qualifications and classification), are authorized.

6 (n) The legislative rules filed in the state register on the
7 seventeenth day of July, one thousand nine hundred ninety-one,
8 modified by the insurance commissioner to meet the objections of the
9 legislative rule-making review committee and refiled in the state
10 register on the thirteenth day of January, one thousand nine hundred
11 ninety-two, relating to the insurance commissioner (permanent
12 regulations on Medicare supplement insurance), are authorized.

13 (o) The legislative rules filed in the state register on the
14 twelfth day of August, one thousand nine hundred ninety-one, modified
15 by the insurance commissioner to meet the objections of the
16 legislative rule-making review committee and refiled in the state
17 register on the thirteenth day of January, one thousand nine hundred
18 ninety-two, relating to the insurance commissioner ("tail"
19 malpractice insurance covering certain medical and allied health care
20 providers), are authorized.

21 (p) The legislative rules filed in the state register on the
22 eighteenth day of September, one thousand nine hundred ninety-two,
23 relating to the insurance commissioner (regulation of credit life
24 insurance and credit accident and sickness insurance), are
25 authorized.

1 (q) The legislative rules filed in the state register on the
2 eighteenth day of September, one thousand nine hundred ninety-two,
3 modified by the insurance commissioner to meet the objections of the
4 legislative rule-making review committee and refiled in the state
5 register on the tenth day of December, one thousand nine hundred
6 ninety-two, relating to the insurance commissioner (filing fees for
7 purchasing groups and for risk retention groups not chartered in this
8 state), are authorized.

9 (r) The legislative rules filed in the state register on the
10 fourteenth day of October, one thousand nine hundred ninety-two,
11 relating to the insurance commissioner (group coordination of
12 benefits), are authorized with the amendment set forth below:

13 "On page six, subsection 2.1.9., after the words 'If a person
14 is covered by more than one employer group minimum benefits plan, the
15 order of benefits determination rules of this regulation decide the
16 order in which their benefits are determined in relation to each
17 other' by inserting a colon and the words 'Provided, That under the
18 provisions of West Virginia Code §5-16-12(a), coverage issued
19 pursuant to the Public Employees Insurance Act is secondary to an
20 employer group minimum benefits plan and any other applicable health
21 insurance coverage.' "

22 (s) The legislative rules filed in the state register on the
23 eighteenth day of September, one thousand nine hundred ninety-two,
24 modified by the insurance commissioner to meet the objections of the
25 legislative rule-making review committee and refiled in the state

1 register on the fifteenth day of January, one thousand nine hundred
2 ninety-three, relating to the insurance commissioner (permanent
3 regulations on medicare supplement insurance), are authorized.

4 (t) The legislative rules filed in the state register on the
5 eighteenth day of September, one thousand nine hundred ninety-two,
6 modified by the insurance commissioner to meet the objections of the
7 legislative rule-making review committee and refiled in the state
8 register on the fifteenth day of January, one thousand nine hundred
9 ninety-three, relating to the insurance commissioner (individual and
10 employer group minimum benefits, accident and sickness insurance
11 policies), are authorized with the amendment set forth below:

12 "On page two, subsection 3.2 by striking out the period and
13 inserting the following: 'other than coverage issued pursuant to the
14 Public Employees Insurance Act, as provided in West Virginia Code
15 §5-16-12(a).' "

16 (u) The legislative rules filed in the state register on the
17 eighteenth day of September, one thousand nine hundred ninety-two,
18 modified by the insurance commissioner to meet the objections of the
19 legislative rule-making review committee and refiled in the state
20 register on the fifteenth day of January, one thousand nine hundred
21 ninety-three, relating to the insurance commissioner (long-term care
22 insurance), are authorized.

23 (v) The legislative rules filed in the state register on the
24 eighteenth day of September, one thousand nine hundred ninety-two,
25 modified by the insurance commissioner to meet the objections of the

1 legislative rule-making review committee and refiled in the state
2 register on the fifteenth day of January, one thousand nine hundred
3 ninety-three, relating to the insurance commissioner (standards for
4 uniform health care administration), are authorized.

5 (w) The legislative rules filed in the state register on the
6 sixteenth day of August, one thousand nine hundred ninety-three,
7 modified by the insurance commissioner to meet the objections of the
8 legislative rule-making review committee and refiled in the state
9 register on the twenty-ninth day of November, one thousand nine
10 hundred ninety-three, relating to the insurance commissioner
11 (insurance holding company systems reporting forms), are authorized.

12 (x) The legislative rules filed in the state register on the
13 sixteenth day of August, one thousand nine hundred ninety-three,
14 modified by the insurance commissioner to meet the objections of the
15 legislative rule-making review committee and refiled in the state
16 register on the twenty-ninth day of November, one thousand nine
17 hundred ninety-three, relating to the insurance commissioner
18 (substandard motor vehicle insurance notice requirements), are
19 authorized.

20 (y) The legislative rules filed in the state register on the
21 sixteenth day of August, one thousand nine hundred ninety-three,
22 modified by the insurance commissioner to meet the objections of the
23 legislative rule-making review committee and refiled in the state
24 register on the twenty-ninth day of November, one thousand nine
25 hundred ninety-three, relating to the insurance commissioner (filing

1 fees for purchasing groups and for risk retention groups not
2 chartered in this state), are authorized.

3 (z) The legislative rules filed in the state register on the
4 sixteenth day of August, one thousand nine hundred ninety-three,
5 modified by the insurance commissioner to meet the objections of the
6 legislative rule-making review committee and refiled in the state
7 register on the twenty-ninth day of November, one thousand nine
8 hundred ninety-three, relating to the insurance commissioner
9 (continuation of coverage under automobile liability policies), are
10 authorized.

11 (aa) The legislative rules filed in the state register on the
12 sixteenth day of August, one thousand nine hundred ninety-three,
13 modified by the insurance commissioner to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the twenty-ninth day of November, one thousand nine
16 hundred ninety-three, relating to the insurance commissioner (West
17 Virginia life and health insurance guaranty association act notice
18 requirements), are authorized.

19 (bb) The legislative rules filed in the state register on the
20 sixteenth day of August, one thousand nine hundred ninety-three,
21 modified by the insurance commissioner to meet the objections of the
22 legislative rule-making review committee and refiled in the state
23 register on the twenty-ninth day of November, one thousand nine
24 hundred ninety-three, relating to the insurance commissioner (group
25 accident and sickness insurance minimum policy coverage standards),

1 are authorized with the amendments set forth below:

2 On page two, section one, by inserting five new subsections to
3 read as follows:

4 "1.2.j. Coverage under a managed care program.

5 1.2.k. Bona Fide Associations.

6 1.2.l. Basic Hospital and Medical-Surgical Expense Coverage.

7 1.2.m. Coverage under policies issued to groups of 61 or more
8 under which the coverage is negotiated by the policy holder.

9 1.2.n. Individual limited benefits policies subject to the
10 requirements of West Virginia Code §§ 33-16E-1, et. seq."

11 And,

12 On page two, section two, by inserting two new subsections,
13 designated subsections 2.2 and 2.3, to read as follows, and
14 renumbering the remaining subsections:

15 "2.2 Basic Hospital and Medical Surgical Expense Coverage" means
16 policies designed to provide coverage for hospital and medical
17 surgical expenses only incurred as a result of a covered accident or
18 sickness. Coverage is provided for daily hospital room and board,
19 miscellaneous hospital services, hospital out-patient services,
20 surgical services, anesthesia services, and in-hospital medical
21 services, subject to any limitations, deductibles and copayment
22 requirements set forth in the policy. Coverage is not provided for
23 unlimited hospital or medical surgical expenses.

24 2.3 'Bona Fide Association' means plans with a minimum of one
25 hundred members which shall have been organized in good faith for

1 purposes other than that of obtaining or providing insurance:
2 Provided, however, That the association shall also have been in
3 active existence for at least two years and shall have a constitution
4 and bylaws which provide that: (1) The Association holds annual
5 meetings to further purposes of its members; (2) except in the case
6 of credit unions, the association collects dues or solicits
7 contributions from members; (3) the members have voting privileges
8 and representation on the governing board and committees that exist
9 under the authority of the association.";

10 And,

11 On page four, subsection 3.1, by deleting references to "or
12 certificate" and "or certificate holder" and by adding to the end of
13 the subsection the following:

14 "Certificates issued under a policy subject to this rule and the
15 terms used therein shall be consistent with this section.";

16 And,

17 On page nine, subsection 5.1, by deleting the following "on
18 certificates" and by adding the following at the end thereof:

19 "The benefits described in a certificate issued under a policy
20 subject to this rule shall be consistent with the benefits contained
21 in the policy and shall be no less than those required under this
22 section.";

23 And,

24 On page nine, subsection 5.1.b by striking out subsection 5.1.b
25 in its entirety and inserting in lieu thereof the following:

1 "5.1.b If an insurer terminates coverage under a policy
2 providing pregnancy coverage, such policy shall provide for an
3 extension of benefits as to pregnancy commencing while the policy is
4 in force and for which benefits would have been payable had the
5 policy remained in force, provided that this subsection shall not
6 apply when termination of coverage is due to fraud, nonpayment of
7 premium or any breach of the terms of the policy for which
8 termination is authorized under chapter thirty-three of the code.";

9 And,

10 On page ten, subsection 5.1.3, by adding at the end of such
11 subsection the following:

12 "provided such benefits may be limited to those expenses
13 directly relating to the organ donation.";

14 And,

15 On page ten, subsection 5.1.i, by striking said subsection in
16 its entirety and inserting in lieu thereof the following:

17 "5.1.i. Termination of coverage under a policy shall be without
18 prejudice to any continuous loss which commenced while the policy was
19 in force, but the extension of benefits beyond the period the policy
20 was in force may be predicated upon the continuous disability of the
21 insured or limited to the duration of the policy benefit period if
22 any: **Provided,** That this subsection shall not apply when
23 termination of coverage is due to fraud, nonpayment of premium or any
24 breach of the terms of the policy for which termination is authorized
25 under chapter thirty-three of the code.";

1 And,

2 On page nineteen, subsection 6.1, by deleting the references to
3 "or certificate" and "or certificate holder";

4 And,

5 On page twenty, subsection 6.9, by adding at the end of the
6 section the following:

7 "The notice shall also state that in the event the policy holder
8 exercises this right, the insurer shall not be obligated to pay any
9 benefits under the policy for claims submitted to the insurer during
10 such ten (10) day period."

11 (cc) The legislative rules filed in the state register on the
12 twelfth day of August, one thousand nine hundred ninety-four,
13 modified by the insurance commissioner to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the twenty-third day of November, one thousand nine
16 hundred ninety-four, relating to the insurance commissioner (credit
17 for reinsurance), are authorized.

18

19 NOTE: The purpose of this bill is to authorize the Insurance
20 Commissioner to promulgate legislative rules relating to credit for
21 reinsurance.

22

23 Strike-throughs indicate language that would be stricken from
24 the present law, and underscoring indicates new language that would
25 be added.

26

Bill-Insurance, Reinsurance

SL18

114-40

H. B. 2175

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)

(Introduced January 23, 1995 ; referred to the
Committee on Banking and Insurance then the Judiciary)

A BILL to amend and reenact section two, article seven, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authorizing the
insurance commissioner to promulgate legislative rules relating
to credit for reinsurance.

Be it enacted by the Legislature of West Virginia:

That section two, article seven, chapter sixty-four of the code
of West Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted, to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO
PROMULGATE LEGISLATIVE RULES.**

§64-7-2. Insurance commissioner.

(a) The legislative rules filed in the state register on the
eighteenth day of October, one thousand nine hundred eighty-three,
relating to the insurance commissioner (excess line brokers), are

1 authorized.

2 (b) The legislative rules filed in the state register on the
3 eighteenth day of August, one thousand nine hundred eighty-six,
4 modified by the insurance commissioner to meet the objections of the
5 legislative rule-making review committee and refiled in the state
6 register on the twelfth day of December, one thousand nine hundred
7 eighty-six, relating to the insurance commissioner (examiners'
8 compensation, qualification and classification), are authorized.

9 (c) The legislative rules filed in the state register on the
10 twentieth day of February, one thousand nine hundred eighty-seven,
11 relating to the insurance commissioner (West Virginia essential
12 property insurance association), are authorized.

13 (d) The legislative rules filed in the state register on the
14 twenty-ninth day of May, one thousand nine hundred eighty-seven,
15 relating to the insurance commissioner (medical malpractice annual
16 reporting requirements), are authorized.

17 (e) The legislative rules filed in the state register on the
18 thirty-first day of July, one thousand nine hundred eighty-seven,
19 modified by the insurance commissioner to meet the objections of the
20 legislative rule-making review committee and refiled in the state
21 register on the seventh day of November, one thousand nine hundred
22 eighty-seven, relating to the insurance commissioner (medical
23 malpractice loss experience and loss expense reporting requirements),
24 are authorized.

25 (f) The legislative rules filed in the state register on the

1 thirtieth day of November, one thousand nine hundred eighty-eight,
2 modified by the insurance commissioner to meet the objections of the
3 legislative rule-making review committee and refiled in the state
4 register on the twenty-first day of February, one thousand nine
5 hundred eighty-nine, relating to the insurance commissioner
6 (transitional requirements for the conversion of Medicare supplement
7 insurance benefits and premiums to conform to Medicare program
8 revisions), are authorized.

9 (g) The legislative rules filed in the state register on the
10 twenty-sixth day of May, one thousand nine hundred eighty-nine,
11 modified by the insurance commissioner to meet the objections of the
12 legislative rule-making review committee and refiled in the state
13 register on the twenty-eighth day of September, one thousand nine
14 hundred eighty-nine, relating to the insurance commissioner
15 (insurance adjusters), are authorized.

16 (h) The legislative rules filed in the state register on the
17 second day of February, one thousand nine hundred ninety, modified
18 by the insurance commissioner to meet the objections of the
19 legislative rule-making review committee and refiled in the state
20 register on the twenty-ninth day of May, one thousand nine hundred
21 ninety, relating to the insurance commissioner (accident and sickness
22 rate filing), are authorized.

23 (i) The legislative rules filed in the state register on the
24 tenth day of August, one thousand nine hundred ninety, modified by
25 the insurance commissioner to meet the objections of the legislative

1 rule-making review committee and refiled in the state register on the
2 ninth day of October, one thousand nine hundred ninety, relating to
3 the insurance commissioner (group coordination of benefits), are
4 authorized.

5 (j) The legislative rules filed in the state register on the
6 tenth day of August, one thousand nine hundred ninety, modified by
7 the insurance commissioner to meet the objections of the legislative
8 rule-making review committee and refiled in the state register on the
9 seventeenth day of January, one thousand nine hundred ninety-one,
10 relating to the insurance commissioner (AIDS regulations), are
11 authorized.

12 (k) The legislative rules filed in the state register on the
13 third day of December, one thousand nine hundred ninety, relating to
14 the insurance commissioner (health insurance benefits for
15 temporomandibular and craniomandibular disorders), are authorized.

16 (l) The legislative rules filed in the state register on the
17 twelfth day of August, one thousand nine hundred ninety-one, modified
18 by the insurance commissioner to meet the objections of the
19 legislative rule-making review committee and refiled in the state
20 register on the thirteenth day of January, one thousand nine hundred
21 ninety-two, relating to the insurance commissioner (guaranteed loss
22 ratios as applied to individual sickness and accident insurance
23 policies), are authorized.

24 (m) The legislative rules filed in the state register on the
25 ninth day of August, one thousand nine hundred ninety-one, modified

1 by the insurance commissioner to meet the objections of the
2 legislative rule-making review committee and refiled in the state
3 register on the thirteenth day of January, one thousand nine hundred
4 ninety-two, relating to the insurance commissioner (examiners'
5 compensation, qualifications and classification), are authorized.

6 (n) The legislative rules filed in the state register on the
7 seventeenth day of July, one thousand nine hundred ninety-one,
8 modified by the insurance commissioner to meet the objections of the
9 legislative rule-making review committee and refiled in the state
10 register on the thirteenth day of January, one thousand nine hundred
11 ninety-two, relating to the insurance commissioner (permanent
12 regulations on Medicare supplement insurance), are authorized.

13 (o) The legislative rules filed in the state register on the
14 twelfth day of August, one thousand nine hundred ninety-one, modified
15 by the insurance commissioner to meet the objections of the
16 legislative rule-making review committee and refiled in the state
17 register on the thirteenth day of January, one thousand nine hundred
18 ninety-two, relating to the insurance commissioner ("tail"
19 malpractice insurance covering certain medical and allied health care
20 providers), are authorized.

21 (p) The legislative rules filed in the state register on the
22 eighteenth day of September, one thousand nine hundred ninety-two,
23 relating to the insurance commissioner (regulation of credit life
24 insurance and credit accident and sickness insurance), are
25 authorized.

1 (q) The legislative rules filed in the state register on the
2 eighteenth day of September, one thousand nine hundred ninety-two,
3 modified by the insurance commissioner to meet the objections of the
4 legislative rule-making review committee and refiled in the state
5 register on the tenth day of December, one thousand nine hundred
6 ninety-two, relating to the insurance commissioner (filing fees for
7 purchasing groups and for risk retention groups not chartered in this
8 state), are authorized.

9 (r) The legislative rules filed in the state register on the
10 fourteenth day of October, one thousand nine hundred ninety-two,
11 relating to the insurance commissioner (group coordination of
12 benefits), are authorized with the amendment set forth below:

13 "On page six, subsection 2.1.9., after the words 'If a person
14 is covered by more than one employer group minimum benefits plan, the
15 order of benefits determination rules of this regulation decide the
16 order in which their benefits are determined in relation to each
17 other' by inserting a colon and the words 'Provided, That under the
18 provisions of West Virginia Code §5-16-12(a), coverage issued
19 pursuant to the Public Employees Insurance Act is secondary to an
20 employer group minimum benefits plan and any other applicable health
21 insurance coverage.' "

22 (s) The legislative rules filed in the state register on the
23 eighteenth day of September, one thousand nine hundred ninety-two,
24 modified by the insurance commissioner to meet the objections of the
25 legislative rule-making review committee and refiled in the state

1 register on the fifteenth day of January, one thousand nine hundred
2 ninety-three, relating to the insurance commissioner (permanent
3 regulations on medicare supplement insurance), are authorized.

4 (t) The legislative rules filed in the state register on the
5 eighteenth day of September, one thousand nine hundred ninety-two,
6 modified by the insurance commissioner to meet the objections of the
7 legislative rule-making review committee and refiled in the state
8 register on the fifteenth day of January, one thousand nine hundred
9 ninety-three, relating to the insurance commissioner (individual and
10 employer group minimum benefits, accident and sickness insurance
11 policies), are authorized with the amendment set forth below:

12 "On page two, subsection 3.2. by striking out the period and
13 inserting the following: 'other than coverage issued pursuant to the
14 Public Employees Insurance Act, as provided in West Virginia Code
15 §5-16-12(a).' "

16 (u) The legislative rules filed in the state register on the
17 eighteenth day of September, one thousand nine hundred ninety-two,
18 modified by the insurance commissioner to meet the objections of the
19 legislative rule-making review committee and refiled in the state
20 register on the fifteenth day of January, one thousand nine hundred
21 ninety-three, relating to the insurance commissioner (long-term care
22 insurance), are authorized.

23 (v) The legislative rules filed in the state register on the
24 eighteenth day of September, one thousand nine hundred ninety-two,
25 modified by the insurance commissioner to meet the objections of the

1 legislative rule-making review committee and refiled in the state
2 register on the fifteenth day of January, one thousand nine hundred
3 ninety-three, relating to the insurance commissioner (standards for
4 uniform health care administration), are authorized.

5 (w) The legislative rules filed in the state register on the
6 sixteenth day of August, one thousand nine hundred ninety-three,
7 modified by the insurance commissioner to meet the objections of the
8 legislative rule-making review committee and refiled in the state
9 register on the twenty-ninth day of November, one thousand nine
10 hundred ninety-three, relating to the insurance commissioner
11 (insurance holding company systems reporting forms), are authorized.

12 (x) The legislative rules filed in the state register on the
13 sixteenth day of August, one thousand nine hundred ninety-three,
14 modified by the insurance commissioner to meet the objections of the
15 legislative rule-making review committee and refiled in the state
16 register on the twenty-ninth day of November, one thousand nine
17 hundred ninety-three, relating to the insurance commissioner
18 (substandard motor vehicle insurance notice requirements), are
19 authorized.

20 (y) The legislative rules filed in the state register on the
21 sixteenth day of August, one thousand nine hundred ninety-three,
22 modified by the insurance commissioner to meet the objections of the
23 legislative rule-making review committee and refiled in the state
24 register on the twenty-ninth day of November, one thousand nine
25 hundred ninety-three, relating to the insurance commissioner (filing

1 fees for purchasing groups and for risk retention groups not
2 chartered in this state), are authorized.

3 (z) The legislative rules filed in the state register on the
4 sixteenth day of August, one thousand nine hundred ninety-three,
5 modified by the insurance commissioner to meet the objections of the
6 legislative rule-making review committee and refiled in the state
7 register on the twenty-ninth day of November, one thousand nine
8 hundred ninety-three, relating to the insurance commissioner
9 (continuation of coverage under automobile liability policies), are
10 authorized.

11 (aa) The legislative rules filed in the state register on the
12 sixteenth day of August, one thousand nine hundred ninety-three,
13 modified by the insurance commissioner to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the twenty-ninth day of November, one thousand nine
16 hundred ninety-three, relating to the insurance commissioner (West
17 Virginia life and health insurance guaranty association act notice
18 requirements), are authorized.

19 (bb) The legislative rules filed in the state register on the
20 sixteenth day of August, one thousand nine hundred ninety-three,
21 modified by the insurance commissioner to meet the objections of the
22 legislative rule-making review committee and refiled in the state
23 register on the twenty-ninth day of November, one thousand nine
24 hundred ninety-three, relating to the insurance commissioner (group
25 accident and sickness insurance minimum policy coverage standards),

1 are authorized with the amendments set forth below:

2 On page two, section one, by inserting five new subsections to
3 read as follows:

4 "1.2.j. Coverage under a managed care program.

5 1.2.k. Bona Fide Associations.

6 1.2.l. Basic Hospital and Medical-Surgical Expense Coverage.

7 1.2.m. Coverage under policies issued to groups of 61 or more
8 under which the coverage is negotiated by the policy holder.

9 1.2.n. Individual limited benefits policies subject to the
10 requirements of West Virginia Code §§ 33-16E-1, et. seq."

11 And,

12 On page two, section two, by inserting two new subsections,
13 designated subsections 2.2 and 2.3, to read as follows, and
14 renumbering the remaining subsections:

15 "2.2 Basic Hospital and Medical Surgical Expense Coverage" means
16 policies designed to provide coverage for hospital and medical
17 surgical expenses only incurred as a result of a covered accident or
18 sickness. Coverage is provided for daily hospital room and board,
19 miscellaneous hospital services, hospital out-patient services,
20 surgical services, anesthesia services, and in-hospital medical
21 services, subject to any limitations, deductibles and copayment
22 requirements set forth in the policy. Coverage is not provided for
23 unlimited hospital or medical surgical expenses.

24 2.3 'Bona Fide Association' means plans with a minimum of one
25 hundred members which shall have been organized in good faith for

1 purposes other than that of obtaining or providing insurance:
2 **Provided, however,** That the association shall also have been in
3 active existence for at least two years and shall have a constitution
4 and bylaws which provide that: (1) The Association holds annual
5 meetings to further purposes of its members; (2) except in the case
6 of credit unions, the association collects dues or solicits
7 contributions from members; (3) the members have voting privileges
8 and representation on the governing board and committees that exist
9 under the authority of the association.";

10 And,

11 On page four, subsection 3.1, by deleting references to "or
12 certificate" and "or certificate holder" and by adding to the end of
13 the subsection the following:

14 "Certificates issued under a policy subject to this rule and the
15 terms used therein shall be consistent with this section.";

16 And,

17 On page nine, subsection 5.1, by deleting the following "on
18 certificates" and by adding the following at the end thereof:

19 "The benefits described in a certificate issued under a policy
20 subject to this rule shall be consistent with the benefits contained
21 in the policy and shall be no less than those required under this
22 section.";

23 And,

24 On page nine, subsection 5.1.b by striking out subsection 5.1.b
25 in its entirety and inserting in lieu thereof the following:

1 "5.1.b If an insurer terminates coverage under a policy
2 providing pregnancy coverage, such policy shall provide for an
3 extension of benefits as to pregnancy commencing while the policy is
4 in force and for which benefits would have been payable had the
5 policy remained in force, provided that this subsection shall not
6 apply when termination of coverage is due to fraud, nonpayment of
7 premium or any breach of the terms of the policy for which
8 termination is authorized under chapter thirty-three of the code.";

9 And,

10 On page ten, subsection 5.1.3, by adding at the end of such
11 subsection the following:

12 "provided such benefits may be limited to those expenses
13 directly relating to the organ donation.";

14 And,

15 On page ten, subsection 5.1.1, by striking said subsection in
16 its entirety and inserting in lieu thereof the following:

17 "5.1.i. Termination of coverage under a policy shall be without
18 prejudice to any continuous loss which commenced while the policy was
19 in force, but the extension of benefits beyond the period the policy
20 was in force may be predicated upon the continuous disability of the
21 insured or limited to the duration of the policy benefit period if
22 any: **Provided,** That this subsection shall not apply when
23 termination of coverage is due to fraud, nonpayment of premium or any
24 breach of the terms of the policy for which termination is authorized
25 under chapter thirty-three of the code.";

1 And,

2 On page nineteen, subsection 6.1, by deleting the references to
3 "or certificate" and "or certificate holder";

4 And,

5 On page twenty, subsection 6.9, by adding at the end of the
6 section the following:

7 "The notice shall also state that in the event the policy holder
8 exercises this right, the insurer shall not be obligated to pay any
9 benefits under the policy for claims submitted to the insurer during
10 such ten (10) day period."

11 (cc) The legislative rules filed in the state register on the
12 twelfth day of August, one thousand nine hundred ninety-four,
13 modified by the insurance commissioner to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the twenty-third day of November, one thousand nine
16 hundred ninety-four, relating to the insurance commissioner (credit
17 for reinsurance), are authorized.

18
19 NOTE: The purpose of this bill is to authorize the Insurance
20 Commissioner to promulgate legislative rules relating to credit for
21 reinsurance.

22
23 Strike-throughs indicate language that would be stricken from
24 the present law, and underscoring indicates new language that would
25 be added.
26



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

RECEIVED

JUN 19 1995

LEGAL DIVISION
W. VA. INS. DEPT.

TO: B. Keith Huffman

AGENCY: Insurance

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 19, 1995

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 40 TITLE: 114 Insurance

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE
 JUL 17 11 11 AM '95

FILED

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: B. Keith Huffman

TITLE OF PERSON SIGNING: General Counsel

DATE: 7/7/95

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.