

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**ENROLLED**

## **House Bill 2480**

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

GRAVES, JENNINGS, CRISS, MANDT, NELSON, ESPINOSA

AND PORTERFIELD

(BY REQUEST OF THE INSURANCE COMMISSION)

[Passed March 8, 2019; in effect ninety days from

passage.]



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

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

**ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.**

**§33-27-2. Definitions.**

1 As used in this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (1) Does not have substantial insurance operations in the United States;

6 (2) Has substantial insurance operations in the United States, but not in this state; or

7 (3) Has substantial insurance operations in the United States and this state, but the  
8 commissioner has determined pursuant to the factors set forth in subsections (c) and (g) of this  
9 section that the other regulatory official is the appropriate group-wide supervisor.

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

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

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

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

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

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

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

30 or

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

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

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

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

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

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

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

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

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

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

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



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

77           (A) Governance, risk assessment and management;

78           (B) Capital adequacy; and

79           (C) Material intercompany transactions;

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

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

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

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

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

103 *Provided, That:*

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

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

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

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

**§33-27-7. Confidential treatment.**

1 (a) Documents, materials or other information in the possession or control of the  
2 commissioner that are obtained by or disclosed to the commissioner or any other person in the  
3 course of an examination or investigation made pursuant to §33-27-6 of this code and all  
4 information reported or provided to the commissioner pursuant to §33-27-3(b) (12) or §33-27-3(b)  
5 (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 of this code,  
7 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  
11 brought as part of the commissioner's official duties. The commissioner may not otherwise make  
12 the documents, materials or other information public without the prior written consent of the  
13 insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who  
14 would be affected thereby notice and opportunity to be heard, determines that the interests of  
15 policyholders, shareholders or the public will be served by the publication thereof, in which event  
16 he or she may publish all or any part thereof in any manner as he or she may consider appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

\_\_\_\_\_

The within ..... this the.....  
day of ....., 2019.

.....  
*Governor*