

SB 800 -- Redline

Committee Substitute to Committee Substitute -- Relating to insurance holding company systems

Deletions ~~struck~~ · Insertions underlined

WEST VIRGINIA LEGISLATURE REGULAR SESSION Enrolled Committee Substitute for Senate Bill 800
~~BY SENATORS AZINGER, ENATO, AZINGER, AOLIVERIO [Reported [Passed March April 20, 11, 2025, 2025]; from the~~
~~Committee on Banking and Insurance] CS for SB 800 A BILL to amend and reenact Sec.33-27-2, Sec.33-27-4,~~
~~Sec.33-27-5, Sec.33-27-6a, Sec.33-27-7, and Sec.33-27-8 of the Code of West Virginia, 1931, as amended,~~
~~relating to insurance holding company systems;~~
to take effect January 1, 2026] Enr CS for SB 800 AN ACT to amend and reenact Sec.33-27-2, Sec.33-27-4,
Sec.33-27-5, Sec.33-27-6a, Sec.33-27-7, and Sec.33-27- 8 of the Code of West Virginia, 1931, as amended,
relating to insurance holding company systems;

~~CS for SB 800~~ Be it enacted by the Legislature of West Virginia:

Enr CS for SB 800 ARTICLE 27.

~~(a)~~ (1) An "affiliate" of, or person "affiliated" with, a specific person ~~is~~ means a person that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

~~(b)~~ (2) "Commissioner" means the West Virginia Insurance Commissioner, his or her deputies, or the West Virginia offices of the Insurance Commissioner, as appropriate.

~~(c)~~ (3) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

~~(d)~~ (4) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the ~~CS for SB 800~~ insurer's risk-based capital to fall into company action level, as set forth in Sec.33-40-1 et seq.

~~(e)~~ Enr CS for SB 800 (5) "Group capital calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC, from time to time, in accordance with the procedures adopted by the NAIC.

~~(f)~~ (7) "Insurance holding company system" means a system that consists of two or more affiliated persons, one or more of which is an insurer.

~~(g)~~ (8) "Insurer" means any person, ~~or~~ persons, ~~or~~ corporation, partnership, or company authorized by the laws of this state to transact the business of insurance in this state, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

~~(h)~~ (9) "Internationally active insurance group" means an insurance holding company system that includes an insurer registered under Sec.33-27-4 of this code and meets the following criteria:

~~(1)~~ (A) Premiums written in at least three countries;

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

and ~~CS for SB 800 (3)~~ (C) Based on a three-year rolling average, the total assets of the insurance holding company system are at least \$50 billion or the total gross written premiums of the insurance holding company system are at least \$10 billion.

(11) "NAIC liquidity stress test framework" means a NAIC publication that includes a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, such scope criteria, instructions, and reporting template being as adopted Enr CS for SB 800 by the NAIC and as amended by the NAIC, from time to time, in accordance with the procedures adopted by the NAIC.

~~(i)~~ (12) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, ~~a depository institution or~~ any similar entity, or any combination of the foregoing acting in concert, but does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

~~(j)~~ (14) A "security holder" of a specified person ~~is~~ means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

~~(k)~~ (15) A "subsidiary" of a specified person ~~is~~ means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

~~CS for SB 800 (1)~~ (16) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

~~this Enr section, CS subsections for (a), SB (b) 800 and (c), section five of this article, and either subsection (d), section five of this article or has~~ (A) This section;

The commissioner may require any authorized insurer which is a member of ~~a~~ an insurance holding company system which is not subject to registration under this section to furnish a copy of the registration statement, the summary described in subsection (c) of this section, or ~~CS for SB 800~~ other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

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

Enr CS for SB 800 (B) Purchases, sales, or exchanges of assets;

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

~~CS for SB 800~~ (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

Enr CS for SB 800 (c) Summary of changes to registration statement.

Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, ~~or~~ investments, or guarantees involving one half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

The definition of materiality provided in this ~~CS for SB 800~~ subsection shall not apply for the purposes of the group capital calculation or the liquidity stress test framework.

Enr CS for SB 800 (i) Alternative registration.

The disclaimer shall fully disclose all material relationships and bases ~~CS for SB 800~~ for affiliation between the person and the insurer as well as the basis for disclaiming such affiliation.

(l) Enterprise Risk ~~Filing~~ Filings.

The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the ~~National Association of Insurance Commissioners~~ NAIC.

Enr CS for SB 800 (2) Group capital calculation.

The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within ~~CS for SB 800~~ the Financial Analysis Handbook adopted by the NAIC.

(I) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through Enr CS for SB 800 the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the Financial Analysis Handbook adopted by the NAIC;

~~CS for SB 800~~ (B) Notwithstanding the provisions of Sec.33-27-4(l)(2)(A)(iii) and Sec.33-27-4(l)(2)(A)(iv) of this code, a lead state commissioner shall require the group capital calculation for United States operations of any non-United States based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

-- (A) The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC liquidity stress test framework shall file the results of a specific year's liquidity stress Enr CS for SB 800 test.

Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year ~~CS for SB 800~~ following the calendar year when such changes are adopted.

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

Enr CS for SB 800 Sec.33-27-5.

~~CS for SB 800~~ (2) Agreements for cost-sharing services and management shall include such provisions as required by rule;

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

Enr CS for SB 800 In determining whether a deposit or a bond is required, the commissioner should

consider whether concerns exist with respect to the affiliated person's ability to fulfill the contract(s) or agreement(s) if the insurer were to be put into liquidation.

Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the commissioner has discretion to determine the amount of the deposit or bond, not to exceed the value of the contract(s) or ~~CS for SB 800~~ agreement(s) in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with a specific person(s);

Enr CS for SB 800 (b) Adequacy of surplus.

~~CS for SB 800~~ (2) The extent to which the insurer's business is diversified among the several lines of insurance;

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

Enr CS for SB 800 (2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the lesser of:

or (B) The net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month ~~CS for SB 800~~ period ending December 31, next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

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

(d) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, that are subject to any materiality standards contained in subdivisions (1) through ~~(5)~~

(7) of this subsection, may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days Enr CS for SB 800 prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period:

Informal notice shall be reported, within 30 days after a termination of a ~~CS for SB 800~~ previously filed agreement, to the commissioner for determination of the type of filing required, if any.

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

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

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

and Enr CS for SB 800 (B) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of December 31, next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

~~CS for SB 800~~ (4) All management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements;

Provided, That a guarantee that is quantifiable as to amount is not subject to the notice requirements of this ~~subdivision~~ subsection unless it exceeds the lesser of one half of one percent of the insurer's admitted assets or 10 percent of surplus as regards policyholders as of December 31, next preceding:

Provided, however, That all guarantees that are not quantifiable as to amount are subject to the notice requirements of this ~~subdivision~~ subsection;

Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Sec.33-27-2a of this code or authorized under any other section of this chapter, or in ~~nonsubsidiary~~ non-subsubsidiary insurance affiliates that are subject to the provisions of this article, are exempt from this requirement;

(e) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review Enr CS for SB 800 that would occur otherwise.

~~CS for SB 800~~ (g) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds 10 percent of such corporation's voting securities.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely

of directors who are not officers or employees of the insurer or of any entity Enr CS for SB 800 controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity.

~~CS for SB 800~~ (5) The provisions of subdivisions (3) and (4) of this subsection do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of such subdivisions with respect to such controlling entity.

Enr CS for SB 800 (A) Are an integral part of the insurer's operations, including, but not limited to, management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions;

(2) The commissioner may require that an agreement or contract pursuant to Sec.33-27- 5(d)(4) of this code for the provision of services described in Sec.33-27-5(i)(1)(A) and Sec.33-27- ~~CS for SB 800~~ 5(i)(1)(B) of this code specify that the affiliate consents to the jurisdiction as set forth in this subsection.

For Enr CS for SB 800 purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of such expenses.

~~(b)~~-(c) Supervisory college.

-- In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and ~~CS for SB 800~~ as part of the examination of individual insurers in accordance with Sec.33-27-6 of this code, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies.

(a) Documents, materials or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Sec.33-27-6 of this code and all information reported or provided to the commissioner pursuant to Sec.33-27-3(b)(12), Sec.33-27- 3(b)(13), Sec.33-27-4, Sec.33-27-5, or Sec.33-27-6b of this code is confidential by law and privileged, is exempt from disclosure pursuant to chapter ~~29-b~~ 29B of this code, is not open to public inspection, is not subject to subpoena, is not subject to discovery or admissible in evidence in any criminal, private civil, or administrative action, and is not subject to production pursuant to court order:

The commissioner may not otherwise make the documents, Enr CS for SB 800 materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in any manner as he or she may consider appropriate.

~~CS for SB 800~~ (1) For purposes of the information reported and provided to the commissioner pursuant to Sec.33-27-4(l)(2) of this code, the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any United States group-wide supervisor.

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, with any third-party consultants designated by the commissioner, and with state, federal, and international law-enforcement Enr CS for SB 800 authorities, including members of any supervisory college described in Sec.33-27-6a of this code, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

~~CS for SB 800~~ (2) Notwithstanding subdivision (1) of this subsection, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to ~~Sec.33-27-4(l)~~ Sec.33-27- 4(l)(1) of this code, with commissioners of states having statutes or regulations substantially similar to ~~subdivision (1) of this~~ subsection (a) of this section and who have agreed in writing not to disclose such information;

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

and (4) Shall enter into written agreements with the ~~National Association of Insurance Commissioners~~

NAIC and any third-party consultant designated by the commissioner governing sharing and use of information provided pursuant to this article consistent with this subsection that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article, including procedures and protocols for sharing by the ~~National Association of Insurance Commissioners~~ NAIC with other state, federal, or international ~~regulators~~ regulators.

The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain such confidentiality;

Enr CS for SB 800 (B) Specify that ownership of information shared with the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries or a third-party consultant ~~CS for SB 800~~ designated by the commissioner pursuant to this article remains with the commissioner, and the ~~National Association of Insurance Commissioners'~~ NAIC's or third-party consultant's use of the information is subject to the direction of the commissioner;

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

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

~~CS for SB 800~~ (e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

Enr CS for SB 800 (f) Documents, materials, or other information in the possession or control of the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

Provided, That if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures ~~CS for SB 800 for~~ the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the Enr CS for SB 800 falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

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

If an insurer or the commissioner has reason to believe that any security of the insurer has been or ~~CS for SB 800~~ is about to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the commissioner hereunder, the insurer or the commissioner may apply to the circuit court for the county in which the insurer has its principle place of business to enjoin any Enr CS for SB 800 offer, request, invitation, agreement, or acquisition made in contravention of ~~section four of this article~~ Sec.33-27-3 of this code, or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

28 Enr CS for SB 800 The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that

the foregoing bill is correctly enrolled.

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Clerk of the Senate

Clerk of the House of Delegates Originated in the Senate.

To take effect January 1, 2026.

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President of the Senate

Speaker of the House of Delegates _____ The within is

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this the.....

Day of

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..., 2025.

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Governor 29