

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945

ENROLLED

SENATE BILL No. 81

(By Mr. Hall of Raleigh)

PASSED February 27 1945

In Effect From Passage



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Recd
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Senate Bill No. 81

(BY MR. HALL, OF RALEIGH)

[Passed February 27, 1945; in effect from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, by adding thereto a new article to be designated article fourteen, authorizing and regulating the exchange of certain classes of reciprocal or inter-insurance contracts among individuals, partnerships and corporations; empowering corporations generally to make such contracts; regulating venue and process in actions and suits on such contracts; fixing certain fees and taxes on business done under this act; and making other regulations providing

for the licensing and revocation of licenses of attorneys-in-fact acting under reciprocal insurance contracts.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding thereto a new article to be designated article fourteen, to read as follows:

Section 1. Individuals, partnerships and corporations
2 of this state, hereby designated subscribers, are hereby
3 authorized to exchange reciprocal or inter-insurance
4 contracts with each other or with individuals, partner-
5 ships and corporations of other states and countries pro-
6 viding indemnity among themselves from any loss which
7 may be insured against under other provisions of the
8 law excepting life insurance and health and accident
9 insurance. Such contracts and the exchange thereof and
10 subscribers, their attorneys-in-fact and representatives
11 shall be regulated by this act, by sections forty-two and
12 forty-five, article two, chapter thirty-three; sections nine,
13 eleven and twelve, article four, chapter thirty-three; and
14 section one, article one, chapter fifty-six of the code of

15 West Virginia, one thousand nine hundred thirty-one, as
16 last amended, and by no other part of said chapter
17 thirty-three and no other insurance law unless such law
18 is referred to in this act, and no law hereafter enacted
19 shall apply to them, unless they be expressly designated
20 therein. Wherever in said sections forty-two and forty-
21 five, article two and section nine, article four, chapter
22 thirty-three, the word company is used, it shall be deemed
23 to mean attorney-in-fact when such sections are applied
24 to reciprocal or inter-insurance exchanges or contracts.

Sec. 2. Such contracts may be executed by an attorney-
2 in-fact duly authorized and acting for such subscribers,
3 and such attorney-in-fact may be a corporation. The office
4 or offices of such attorney-in-fact may be maintained at
5 such place or places as may be designated by the sub-
6 sscribers in the power of attorney.

Sec. 3. Such attorney-in-fact shall file with the insur-
2 ance commissioner of this state a declaration verified by
3 the oath of such attorney-in-fact, or when such attorney-
4 in-fact is a corporation, by the oath of a chief officer
5 thereof, setting forth:

6 (a) The name of the attorney-in-fact and the name or
7 designation under which such contracts are to be issued,
8 which name or designation shall not be so similar to any
9 other name or designation previously adopted by any
10 attorney-in-fact or any insurance organization in this
11 state so as to confuse or deceive;

12 (b) The kind or kinds of insurance to be effected or
13 exchanged;

14 (c) A copy of the form of policy contract or agreement
15 under or by which such insurance is to be effected or
16 exchanged. Such form of policy contract or agreement
17 must conform to the statutory form, if any has been or
18 is provided by West Virginia statute, for policies for like
19 risks issued by other insurers, but may contain additional
20 provisions, including the subscribers agreement or inter-
21 insurance contract; and any other proper matters which
22 may be approved by the insurance commissioner;

23 (d) A copy of the form of power of attorney or other
24 authorization of such attorney-in-fact under or by which
25 such insurance to be effected or exchanged;

26 (e) The location of the office or offices from which such
27 contracts or agreements are to be issued;

28 (f) That except as to the kinds of insurance herein-
29 after specifically mentioned in this sub-division, applica-
30 tions shall have been made for indemnity upon at least
31 twenty separate risks aggregating not less than five hun-
32 dred thousand dollars represented by executed contracts
33 or bona fide applications to become concurrently effective.
34 In the case of automobile insurance, applications shall
35 have been made for indemnity upon at least two hundred
36 motor vehicles represented by executed contracts or bona
37 fide applications to become concurrently effective on any
38 or all classes of automobile insurance effected by said
39 subscribers through said attorney-in-fact. In the case of
40 airplane insurance, applications shall have been made for
41 indemnity upon at least twenty-five airplanes repre-
42 sented by executed contracts or bona fide applications
43 to become concurrently effective;

44 (g) That there is in the possession of such attorney-
45 in-fact and available for the payment of losses, assets
46 conforming to the requirements of section six hereof;

47 (h) A financial statement in form prescribed by the
48 insurance commissioner for the annual statement;

49 (i) An instrument authorizing service of process as
50 provided for in this act.

Sec. 4. Concurrently with the filing of the declaration
2 provided for by the terms of section three hereof, the
3 attorney-in-fact shall file with the insurance commissioner
4 an instrument in writing, executed by him for said sub-
5 scribers, conditioned that upon the issuance of certificate
6 of authority, provided for in section ten hereof, any action,
7 suit or other proceeding arising out of any insurance
8 contract or policy issued under such license, may be
9 brought in the county of this state wherein the property
10 insured was situated either at the date of the policy or
11 at the time when the right of action accrued, or the
12 person insured had a legal residence at the date of his
13 death or at the time the right of action accrued, and that
14 service of any process or notice may be had upon the
15 auditor of this state in all actions suits or other proceed-
16 ings in this state arising out of such policies, contracts,
17 agreements or other business of insurance transacted

18 under such license, and that said auditor may accept
19 service of any such process or notice.

20 Such service or acceptance of service shall be valid and
21 binding upon such attorney-in-fact and upon all sub-
22 scribers exchanging at any time reciprocal or inter-
23 insurance contracts through such attorney-in-fact. Two
24 copies of such process or notice, in addition to the original,
25 shall be furnished the auditor, and he shall file one copy,
26 forward one copy to said attorney-in-fact and return the
27 original with his acceptance of service or for return of
28 service. But no process or notice shall be served on the
29 auditor or accepted by him less than ten days before
30 the return day thereof. Where the principal office of the
31 attorney-in-fact is located in this state, service of process
32 may be had upon all subscribers by serving same upon
33 the attorney-in-fact at said office. Service of process shall
34 not be had upon said subscribers or any of them in any
35 suit or other proceeding in this state except in the man-
36 ner provided in this section, and any action, suit, or other
37 proceeding may be begun and prosecuted against or de-

38 fended by them under the name or designation adopted
39 by them.

Sec. 5. There shall be filed with the insurance com-
2 missioner of this state by such attorney-in-fact a state-
3 ment under the oath of such attorney-in-fact, giving, in
4 the case of fire insurance, the maximum amount of in-
5 demnity upon any single risk, and such attorney-in-fact
6 shall whenever and as often as shall be required, file
7 with the commissioner of this state a verified statement
8 to the effect that he has examined the commercial rating
9 of such subscribers as shown by the reference book of
10 a commercial agency having at least one hundred thou-
11 sand subscribers, and that from such examination or
12 from other information in his possession it appears that
13 no subscriber has assumed on any fire insurance risk
14 an amount greater than ten per cent of the net worth of
15 such subscriber.

Sec. 6. There shall be maintained at all times as assets
2 for the payment of losses, cash or securities authorized
3 by the laws of the state in which the principal office
4 of the attorney-in-fact is located for the investment of

5 similar funds of insurance companies doing the same
6 kind of business, an amount equal to fifty per cent of the
7 net annual advance premiums or deposits collected and
8 credited to the accounts of subscribers on policies having
9 one year or less to run, and pro rata on those for longer
10 periods; or in lieu thereof, one hundred per cent of the
11 net unearned premiums or deposits collected and credited
12 to the accounts of subscribers. In addition to the assets
13 previously provided for in this section, there shall also
14 be maintained on deposit at the exchange, a surplus fund
15 in cash or such securities of not less than fifty thousand
16 dollars. There shall also be maintained as a claim or
17 loss reserve, in cash or such securities, sufficient to dis-
18 charge all liabilities on all outstanding losses arising
19 under policies issued, the same to be calculated in ac-
20 cordance with the laws of the state relating to similar
21 reserves for companies insuring similar risks. If at any
22 time the amounts on hand are less than the foregoing
23 requirements, the subscribers or their attorney-in-fact
24 for them shall make up the deficiency. If it appears
25 that the amount of funds required in this section has

26 not been accumulated, then the subscribers or the at-
27 torney-in-fact for them shall immediately advance such
28 sums as are needed to comply with the provisions of this
29 section, and the funds so advanced shall not be treated
30 as a liability at the exchange and shall not be withdrawn
31 except with the approval of the insurance commissioner
32 of the state wherein the exchange is domiciled, and such
33 advances shall be repaid only out of the surplus funds
34 of the exchange.

Sec. 7. Said attorney-in-fact shall make an annual
2 report to the insurance commissioner for each calendar
3 year on or before the expiration of the license period,
4 which license period shall correspond to that of other
5 insurance organizations licensed in this state for the
6 transaction of the same class of business. Such license
7 may be extended by the insurance commissioner for not
8 exceeding sixty days upon his extending the time for
9 filing the annual statement. Such annual statement shall
10 show that the financial condition of affairs at the office
11 where such contracts are issued is in accordance with
12 the standard of solvency provided for herein, and shall

13 furnish such additional information and reports as may
14 be required to show the total premiums or deposits col-
15 lected, the total losses paid, the total amounts returned
16 to subscribers and the amounts retained for expenses:
17 *Provided, however,* That such attorney-in-fact shall not
18 be required to furnish the names and addresses of any
19 subscribers except of those holding unpaid final judg-
20 ments. The business affairs and assets of said reciprocal
21 or inter-insurance exchanges, as shown at the office of the
22 attorney-in-fact thereof, shall be subject to examination
23 by the insurance commissioner at the expense of such
24 exchange, at least once in every three years.

Sec. 8. Any corporation now or hereafter organized
2 under the laws of this state, shall, in addition to the
3 rights, powers and franchises specified in its articles of
4 incorporation, have full power and authority to exchange
5 insurance contracts of the kind and character herein
6 mentioned. The right to exchange such contracts is
7 hereby declared to be incident to the purposes for which
8 such corporations are organized and as much granted
9 as the rights and powers expressly conferred.

Sec. 9. No such attorney-in-fact or other person shall
2 directly or indirectly solicit or negotiate any application
3 for contracts of indemnity of the kind and character
4 specified in this act or do any act in the organization
5 of any such exchange until he shall first have filed with
6 the insurance commissioner a copy of the form of policy
7 contract and power of attorney with a statement of the
8 plan or organization and except as aforesaid no such
9 attorney-in-fact or other person shall solicit or accept
10 any such applications for contracts or indemnity; and
11 no such attorney-in-fact shall put into effect or exchange
12 any such contracts of indemnity of the kind and character
13 mentioned in this act without first complying with all
14 of the provisions thereof.

Sec. 10. Except as hereinafter provided, upon com-
2 pliance with the foregoing requirements of this act, the
3 insurance commissioner shall issue a certificate of au-
4 thority to the attorney-in-fact in the name and title of
5 the office mentioned in subdivision (a) of section three.
6 The insurance commissioner may revoke or suspend
7 any certificate of authority issued hereunder in case of

8 breach of any of the conditions imposed by this act after
9 reasonable notice has been given said attorney-in-fact in
10 writing so that he may appear and show cause why such
11 action should not be taken. Any attorney-in-fact who
12 may have procured a certificate of authority hereunder
13 shall have the same renewed annually thereafter: *Pro-*
14 *vided, however,* That any certificate of authority issued
15 shall continue in force and effect until a new certificate
16 of authority is issued or specifically refused.

17 The insurance commissioner may refuse to issue a
18 certificate of authority to any attorney-in-fact if in his
19 judgment such refusal will best promote the interests of
20 the people of this state. When the insurance commis-
21 sioner upon investigation is satisfied that any attorney-
22 in-fact acting under his supervision and holding a license,
23 or certificate of authority from him, is insolvent, or has
24 failed to comply with or is violating the insurance laws
25 of this state applicable to such attorney-in-fact, or is
26 conducting business fraudulently, or is not carrying out
27 its contracts in good faith, he shall begin proceedings
28 for the revocation of the license or certificate of au-
29 thority of such attorney-in-fact.

30 When the insurance commissioner, on application, shall
31 refuse to issue any license, or certificate of authority, or
32 when he shall proceed to revoke the same, whether for
33 any of the reasons aforesaid or in pursuance of any other
34 provision of this act, the attorney-in-fact shall be fur-
35 nished a statement of the reasons for such failure to issue
36 or revocation and shall be given thirty days notice of
37 the time and place of a hearing at which the insurance
38 commissioner will proceed to determine whether such
39 license, or certificate, shall be finally refused, or shall
40 be revoked, as the case may be. Such statement and
41 notice shall be given by mailing the same addressed to
42 the attorney-in-fact at the latest address furnished said
43 insurance commissioner by the attorney-in-fact, by regis-
44 tered mail, the mailing to be at such a time that the
45 statement and notice should reach its destination by due
46 course of mail not less than thirty days before such
47 hearing. The attorney-in-fact may appear with witnesses,
48 and may be heard through its officers or agents, or by
49 counsel, or both. The insurance commissioner may take
50 such oral or written proof, for or against the issuance

51 or revocation, as he may deem advisable, or such at-
52 torney-in-fact may request. If upon the hearing the
53 commissioner finds that the reasons stated for refusing
54 or revoking the license are true, he may finally refuse
55 to issue, or may revoke, the license, or certificate of au-
56 thority. A stenographic report of each proceeding under
57 this section shall be made at the expense of the com-
58 missioner, and a transcript thereof retained in his files,
59 and he shall make a written report of his findings, which
60 shall constitute a part of the record.

61 Any attorney-in-fact, the application of which for a
62 license has been refused, or the license of which has been
63 revoked, in the manner aforesaid, may, within thirty days
64 after the decision of the insurance commissioner upon
65 the hearing aforesaid, present its petition in writing to
66 the circuit court of the county in which the seat of gov-
67 ernment of this state is situated, or to the judge of such
68 court in vacation, praying for a review and reversal of
69 such decision. Before presenting its petition to the court
70 or judge, the petitioner shall mail a copy thereof to the
71 insurance commissioner. Upon the receipt of such copy,

72 the insurance commissioner shall forthwith transmit
73 to the clerk of such court the record of the proceedings
74 before him. The court or judge shall fix a time for the
75 review of said proceedings at his earliest convenience.
76 Notice in writing of the time and place of such hearing
77 shall be given to the insurance commissioner at least
78 ten days before the date set therefor. The court or judge
79 shall, without a jury, hear and determine the case upon
80 the record of the proceedings before the insurance com-
81 missioner. The court or judge may enter an order re-
82 vising or reversing the decision of the insurance com-
83 missioner, if it appears that the decision was clearly
84 wrong, or may affirm such decision. The judgment of
85 the circuit court or judge may be reviewed upon appeal
86 in the supreme court of appeals: *Provided*, That nothing
87 contained in this section shall be taken or construed as
88 preventing any such attorney-in-fact from continuing in
89 good faith all contracts made in this state during the
90 time such attorney-in-fact was legally authorized to
91 transact business therein.

92 When any license, or certificate of authority, has been

93 revoked by the insurance commissioner under the pro-
94 visions of the preceding paragraph, the same may, except
95 where it is otherwise specially provided by law, be re-
96 issued by him when he is satisfied that the conditions
97 causing the revocation have ceased to exist.

Sec. 11. Such attorney-in-fact shall pay into the state
2 treasury the sum of ten dollars as an annual license fee,
3 and a tax of two percent of the gross premiums or de-
4 posits collected from West Virginia subscribers during
5 the preceding calendar year, less cancellations and all
6 amounts returned to subscribers or credited to their ac-
7 counts as savings; and in addition to the foregoing taxes
8 and fees, such attorney-in-fact shall pay an annual
9 premium tax of one-half of one per cent of said premiums
10 for fire policies for the support of the state fire marshal's
11 department; and such license fees and taxes shall be in
12 lieu of all license fees and taxes of whatever character
13 in this state.

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

Charles C. Morris
Chairman Senate Committee

J. A. Snyders
Chairman House Committee

Originated in the Senate

Takes effect from passage

Howard Myers
Clerk of the Senate

J. A. Clipp
Clerk of the House of Delegates

Donald M. Vickers
President of the Senate

John P. Cannon
Speaker House of Delegates

The within Approved this the 2nd
day of March, 1945.

W. S. O'Brien
Governor.



Filed in the office of the Secretary of State
of West Virginia MAR 2 1945
Wm. S. O'BRIEN,
Secretary of State