

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1955



ENROLLED

HOUSE BILL No. 62

(By Mr. Marx)



PASSED Mar 4 1955

In Effect 90 days from Passage



Filed In the Office of the Secretary of State
of West Virginia
D. PITT O'BRIEN
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 67

(Originating in the Committee on Insurance)

[Passed March 4, 1955; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article sixteen, to define and render unlawful unfair methods of competition and unfair and deceptive acts and practices in the business of insurance.

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, as amended, be amended by adding thereto a new article, designated article sixteen, to read as follows:

**Article 16. Unfair Methods of Competition and Unfair and
Deceptive Acts and Practices in the Business of Insurance.**

Section 1. *Declaration of Purposes.*—The purpose of
2 this act is to regulate trade practices in the business of
3 insurance in accordance with the intent of Congress as
4 expressed in the act of Congress of March ninth, one
5 thousand nine hundred forty-five (Public Law fifteen,
6 seventy-ninth Congress), by defining, or providing for the
7 determination of, all such practices in this state which
8 constitute unfair methods of competition or unfair or
9 deceptive acts or practices and by prohibiting the trade
10 practices so defined or determined.

Sec. 2. *Definitions.*—When used in this act:

- 2 (a) "Person" shall mean any individual, corporation,
3 association, partnership, reciprocal exchange, inter-in-
4 surer, Lloyds insurer, fraternal benefit society and any
5 other legal entity engaged in the business of insurance.
6 including agents, brokers, solicitors, and adjusters.
- 7 (b) "Commissioner" shall mean the insurance com-
8 missioner of West Virginia.

Sec. 3. *Unfair Methods of Competition or Unfair and*

2 *Deceptive Acts or Practices Prohibited.*—No person shall
3 engage in this state in any trade practice which is defined
4 in this act as, or determined pursuant to this act to be,
5 an unfair method of competition or unfair or deceptive
6 act or practice in the business of insurance.

Sec. 4. *Unfair Methods of Competition and Unfair or*
2 *Deceptive Acts or Practices Defined.*—The following are
3 hereby defined as unfair methods of competition and
4 unfair and deceptive acts or practices in the business of
5 insurance.

6 (a) *Misrepresentations and false advertising of policy*
7 *contracts.*—Making, issuing, circulating or causing to be
8 made, issued or circulated, any estimate, illustration,
9 circular or statement misrepresenting the terms of any
10 policy issued or to be issued or the benefits or advantages
11 promised thereby or the dividends or share of the surplus
12 to be received thereon, or making any false or misleading
13 statement as to the dividends or share of surplus pre-
14 viously paid on similar policies, or making any misleading
15 representation or any misrepresentation as to the financial
16 condition of any insurer, or as to the legal reserve system

17 upon which any life insurer operates, or using any name
18 or title of any policy or class of policies misrepresenting
19 the true nature thereof, or making any misrepresentation
20 to any policyholder insured in any company for the pur-
21 pose of inducing or tending to induce such policyholder
22 to lapse, forfeit, or surrender his insurance.

23 (b) *False Information and Advertising Generally.*—

24 Making, publishing, disseminating, circulating or placing
25 before the public or causing, directly, to be made, pub-
26 lished, disseminated, circulated or placed before the public.
27 in a newspaper, magazine or other publication, or in the
28 form of a notice, circular, pamphlet, letter or poster, or
29 over any radio station, or in any other way, an adver-
30 tisement, announcement or statement containing any
31 assertion, representation or statement with respect to the
32 business of insurance or with respect to any person in
33 the conduct of his insurance business, which is untrue,
34 deceptive or misleading.

35 (c) *Defamation.*—Making, publishing, disseminating or
36 circulating, directly or indirectly, or aiding, abetting or
37 encouraging the making, publishing, disseminating or

38 circulating of any oral or written statement or any pamph-
 39 let, circular, article or literature which is false or malici-
 40 ously critical of or derogatory to the financial condition
 41 of an insurer and which is calculated to injure any person
 42 engaged in the business of insurance.

43 (d) *Boycott, Coercion and Intimidation.*—Entering into
 44 any agreement to commit, or by any concerted action
 45 committing, any act of boycott, coercion or intimidation
 46 resulting in or tending to result in unreasonable restraint
 47 of, or monopoly in, the business of insurance.

48 (e) *False Financial Statements.*—Filing with any su-
 49 pervisory or other public official, or making, publishing,
 50 disseminating, circulating or delivering to any person, or
 51 placing before the public, or causing directly or indirect-
 52 ly, to be made, published, disseminated, circulated, deliv-
 53 ered to any person or placed before the public, any false
 54 statement of financial condition of an insurer with intent
 55 to deceive.

56 Making any false entry in any book, report or statement
 57 of any insurer with intent to deceive any agent or exam-
 58 iner lawfully appointed to examine into its condition or

59 into any of its affairs, or any public official to whom such
60 insurer is required by law to report, or who has authority
61 by law to examine into its condition or into any of its
62 affairs or, with like intent, wilfully omitting to make a
63 true entry of any material fact pertaining to the business
64 of such insurer in any book, report or statement of such
65 insurer.

66 (f) *Stock Operations and Advisory Board Contracts.*—
67 Issuing or delivering or permitting agents, officers, or em-
68 ployees to issue or deliver agency company stock or other
69 capital stock, or benefit certificates or shares in any com-
70 mon-law corporation, or securities or any special or advi-
71 sory board contracts or other contracts of any kind prom-
72 ising returns and profits as an inducement to insurance.

73 (g) *Unfair Discrimination.*—The commissioner of any
74 one or more of the acts prohibited by sections eleven-a,
75 eighteen, nineteen, twenty-two, and thirty-five of article
76 two of this chapter.

Sec. 5. *Power of Commissioner.*—The commissioner
2 shall have power to examine and investigate into the
3 affairs of every person engaged in the business of insurance

4 in this state in order to determine whether such person
5 has been or is engaged in any unfair method of competition
6 or in any unfair or deceptive act or practice prohibited
7 by section three of this act.

Sec. 6. *Hearings, Witnesses, Appearances, Production
2 of Books, and Service of Process.*—(a) Whenever the com-
3 missioner shall have reason to believe that any such per-
4 son has been engaged or is engaging in this state in any
5 unfair method of competition or any unfair or deceptive
6 act or practice defined in section four, and that a proceed-
7 ing by him in respect thereto would be to the interest of
8 the public, he shall issue and have served upon such per-
9 son a statement of the charges in that respect and a notice
10 of a hearing thereon to be held at a time and place fixed
11 in the notice, which shall not be less than ten days after
12 the date of the service thereof.

13 (b) At the time and place fixed for such hearing, such
14 person shall have an opportunity to be heard and to show
15 cause why an order should not be made by the commis-
16 sioner requiring such person to cease and desist from the
17 acts, methods or practices so complained of. Upon good

18 cause shown, the commissioner shall permit any person
19 to intervene, appear and be heard at such hearing by
20 counsel or in person.

21 (c) Nothing contained in this act shall require the ob-
22 servance of any such hearing of formal rules of pleading
23 or evidence.

24 (d) The commissioner, upon such hearing, may admin-
25 ister oaths, examine and cross-examine witnesses, receive
26 oral and documentary evidence, and shall have the power
27 to subpoena witnesses, compel their attendance and re-
28 quire the production of books, papers, records, correspond-
29 ence or other documents which he deems relevant to the
30 inquiry. At the expense of and at the written request rea-
31 sonably made by a person affected by the hearing, the
32 commissioner shall cause a full stenographic record of the
33 proceedings to be made by a competent stenographic re-
34 porter, and if transcribed, such record shall be made a
35 part of the commissioner's record of the hearing. A copy
36 of such record shall be furnished any other party upon the
37 written request and at the expense of such party. If no
38 stenographic record is made and if a judicial review is

39 sought, the commissioner shall prepare a statement of the
40 evidence and proceeding for use on review. In case a per-
41 son refuses to obey any subpoena issued hereunder or to
42 testify with respect to any matter concerning which he
43 may be lawfully interrogated, the commissioner or his
44 representative may invoke the aid of any circuit court in
45 order that the testimony or evidence be produced. Upon
46 proper showing, such court shall issue a subpoena or
47 order requiring such person to appear before the com-
48 missioner or his representative and produce all evidence
49 and give all testimony touching the matter in question.
50 A person failing to obey such order may be punished by
51 such court as for contempt.

52 (e) Statements of charges, notices, orders and other
53 processes of the commissioner under this act may be
54 served by anyone duly authorized by the commissioner,
55 either in the manner provided by law for service of
56 process in civil actions or by registering and mailing a
57 copy thereof to the person affected by such statement,
58 notice, order or other process at his or its residence or
59 principal office or place of business. The verified return

60 by the person so serving such statement, notice, order or
61 other process, setting forth the manner of such service,
62 shall be proof of the same and the return post card re-
63 ceipt for such statement, notice, order or other process,
64 registered and mailed as aforesaid, shall be proof of the
65 service of the same.

Sec. 7. *Cease and Desist Orders and Modification There-*

2 of.—(a) If, after such hearing, the commissioner shall
3 determine that the method of competition or the act or
4 practice in question is defined in section four and that the
5 person complained of has engaged in such method of
6 competition, act or practice in violation of this act, he
7 shall reduce his findings to writing and shall issue and
8 cause to be served upon the person charged with the
9 violation an order requiring such person to cease and
10 desist from engaging in such method of competition, act
11 or practice.

12 (b) Until the expiration of the time allowed under
13 section eight (a) of this act for filing a petition for review
14 by appeal if no such petition has been duly filed within
15 such time or, if a petition for review has been filed within

16 such time, then until the transcript of the record in the
 17 proceeding has been filed in the circuit court of Kanawha
 18 county, as hereinafter provided, the commissioner may
 19 at any time, upon such notice and in such manner as he
 20 shall deem proper, modify or set aside in whole or in part
 21 any order issued by him under this section.

22 (c) After the expiration of the time allowed for filing
 23 such a petition for review, if no such petition has been
 24 duly filed within such time, the commissioner may, at
 25 any time after notice given pursuant to the requirements
 26 of section six (e) and opportunity for hearing, reopen
 27 and alter, modify or set aside, in whole or in part, any
 28 order issued by him under this section whenever, in his
 29 opinion, conditions of fact or of law have so changed as
 30 to require such action or if the public interest shall so
 31 require.

Sec. 8. *Judicial Review of Cease and Desist Orders.*—

2 (a) Any order or decision of the commissioner under this
 3 section shall be subject to review as provided in section
 4 thirteen, article two of this chapter. The findings of fact
 5 of the commissioner, and any modification thereof as pro-

6 vided for in subsection (b) of this section, if supported
7 by the preponderance of the evidence, shall be conclusive.

8 (b) To the extent that the order of the commissioner
9 is affirmed, the court shall thereupon issue its own order
10 commanding obedience to the terms of such order of the
11 commissioner. If either party shall apply to the court
12 for leave to adduce additional evidence, and shall show
13 to the satisfaction of the court that such additional evi-
14 dence is material and that there were reasonable grounds
15 for the failure to adduce such evidence in the proceeding
16 before the commissioner, the court may order such addi-
17 tional evidence to be taken before the commissioner and
18 to be adduced upon the hearing in such manner and upon
19 such terms and conditions as to the court may seem proper.
20 The commissioner may modify his findings of fact, or
21 make new findings by reason of the additional evidence
22 so taken, and he shall file such modified or new findings,
23 which, if supported by the preponderance of the evidence,
24 shall be conclusive, and his recommendation, if any, for
25 the modification or setting aside of his original order,
26 with the return of such additional evidence.

27 (c) A cease and desist order issued by the commissioner
28 under section seven shall become final.

29 (1) Upon the expiration of the time allowed for filing
30 a petition for review if no such petition has been duly
31 filed within such time; except that the commissioner may
32 thereafter modify or set aside his order to the extent pro-
33 vided in section seven (b); or

34 (2) Upon the final decision of the court if the court
35 directs that the order of the commissioner be affirmed or
36 the petition for review dismissed.

37 (d) No order of the commissioner under this act or
38 order of a court to enforce the same shall in any way
39 relieve or absolve any person affected by such order from
40 any liability under any other laws of this state.

Sec. 9. *Procedure as to Unfair Methods of Competition*
2 *and Unfair or Deceptive Acts or Practices Which Are Not*
3 *Defined.*—(a) Whenever the commissioner shall have rea-
4 son to believe that any person engaged in the business of
5 insurance is engaging in this state in any method of com-
6 petition or in any act or practice in the conduct of such
7 business which is not defined in section four, that such

8 method of competition is unfair or that such act or prac-
9 tice is unfair or deceptive and that a proceeding by him
10 in respect thereto would be to the interest of the public,
11 he may issue and serve upon such person a statement of
12 the charges in that respect and a notice of a hearing there-
13 on to be held at a time and place fixed in the notice, which
14 shall not be less than ten days after the date of the service
15 thereof. Each such hearing shall be conducted in the same
16 manner as the hearings provided for in section six. The
17 commissioner shall, after such hearing, make a report in
18 writing in which he shall state his findings as to the facts,
19 and he shall serve a copy thereof upon such person.

20 (b) If such report charges a violation of this act
21 and if such method of competition, act or practice has
22 not been discontinued, the commissioner may, through
23 the attorney general of this state, at any time after
24 ten days after the service of such report, cause a
25 petition to be filed in the circuit court of Kanawha
26 county or in the circuit court of this state within
27 the district wherein the person resides or has his prin-
28 cipal place of business, to enjoin and restrain such per-

29 son from engaging in such method, act or practice.
30 The court shall have jurisdiction of the proceeding and
31 shall have power to make and enter appropriate orders
32 in connection therewith and to issue such writs as
33 are ancillary to its jurisdiction or are necessary in
34 its judgment to prevent injury to the public pendente
35 lite.

36 (c) A transcript of the proceedings before the commis-
37 sioner including all evidence taken and the report and
38 findings shall be filed with such petition. If either party
39 shall apply to the court for leave to adduce additional
40 evidence and shall show, to the satisfaction of the court,
41 that such additional evidence is material and there were
42 reasonable grounds for the failure to adduce such evi-
43 dence in the proceeding before the commissioner the court
44 may order such additional evidence to be taken before
45 the commissioner and to be adduced upon the hearing in
46 such manner and upon such terms and conditions as to
47 the court may seem proper. The commissioner may mod-
48 ify his findings of fact or make new findings by reason
49 of the additional evidence so taken, and he shall file such

50 modified or new findings with the return of such addi-
51 tional evidence.

52 (d) If the court finds that the method of competition
53 complained of is unfair or that the act or practice com-
54 plained of is unfair or deceptive, that the proceeding by
55 the commissioner with respect thereto is to the interest
56 of the public and that the findings of the commissioner
57 are supported by the weight of the evidence, it shall issue
58 its order enjoining and restraining the continuance of
59 such method of competition, act or practice.

Sec. 10. *Judicial Review by Intervenor.*—If the report
2 of the commissioner does not charge a violation of this
3 act, then any intervenor in the proceedings may, within
4 thirty days after the service of such report, cause a peti-
5 tion to be filed in the circuit court of Kanawha county
6 for a review of such report. Upon such review, the court
7 shall have authority to issue appropriate orders and de-
8 crees in connection therewith, including, if the court finds
9 that it is to the interest of the public, orders enjoining
10 and restraining the continuance of any method of compe-
11 tion, act or practice which it finds, notwithstanding such

12 report of the commissioner, constitutes a violation of this
13 act.

Sec. 11. *Penalty.*—Any person who violates a cease and
2 desist order of the commissioner under section seven of
3 this article, after it has become final and while such order
4 is in effect, shall forfeit and pay to the state of West Vir-
5 ginia a sum not to exceed five thousand dollars for a wil-
6 ful violation thereof; or a sum not to exceed two hundred
7 fifty dollars when such violation is not wilful; which may
8 be recovered in a civil action. Nothing herein shall be
9 construed as limiting the authority of any court to en-
10 force its orders, by contempt proceedings or otherwise.

Sec. 12. *Provisions of Act Additional to Existing Law.*—
2 The powers vested in the commissioner by this act shall
3 be additional to any other powers to enforce any penalties,
4 fines or forfeitures authorized by law with respect to the
5 methods, acts and practices hereby declared to be unfair
6 or deceptive.

Sec. 13. *Immunity From Prosecution.*—If any person
2 shall ask to be excused from attending and testifying or
3 from producing any books, papers, records, correspond-

4 ence or other documents at any hearing on the ground
5 that the testimony or evidence required of him may tend
6 to incriminate him or subject him to a penalty or for-
7 feiture, and shall notwithstanding be directed to give such
8 testimony or produce such evidence, he must none the-
9 less comply with such direction but he shall not there-
10 after be prosecuted or subjected to any penalty or for-
11 feiture for or on account of any transaction, matter or
12 thing concerning which he may testify or produce evi-
13 dence pursuant thereto, and no testimony so given or
14 evidence produced shall be received against him upon
15 any criminal action, investigation or proceeding: *Provid-*
16 *ed, however,* That no such individual so testifying shall be
17 exempt from prosecution or punishment for any perjury
18 or false swearing committed by him while so testifying
19 and the testimony or evidence so given or produced shall
20 be admissible against him upon any criminal action, in-
21 vestigation or proceeding concerning such perjury or false
22 swearing, nor shall he be exempt from the refusal, revo-
23 cation or suspension of any license, permission or author-
24 ity conferred, or to be conferred, pursuant to the insur-

25 ance law of this state. Any such individual may execute,
26 acknowledge and file in the office of the commissioner a
27 statement expressly waiving such immunity or privilege
28 in respect to any transaction, matter or thing specified
29 in such statement and thereupon the testimony of such
30 person or such evidence in relation to such transaction,
31 matter or thing may be received or produced before any
32 judge or justice, court, tribunal, grand jury or otherwise,
33 and if so received or produced such individual shall not
34 be entitled to any immunity or privilege on account of any
35 testimony he may so give or evidence so produced.

Sec. 14. *Trade Practice Conferences.*—(a) Trade prac-
2 tice conferences for the purpose of dealing with such trade
3 practices as are within the purview of this article and
4 not defined in section four of this article, or for the pur-
5 pose of establishing supplementary regulations and rules
6 relating to trade practices defined in section four, may
7 be authorized by the commissioner upon his own motion,
8 or upon written application therefor by any insurer or
9 person as defined in this article to whom rulings arising
10 therefrom may be directly applicable, whenever such a

11 conference may appear to the commissioner to be in the
12 interest of the public. The commissioner shall give rea-
13 sonable notice to such persons as he shall deem directly
14 affected, or to their representatives, of the time and place
15 of any such conference. Such notice shall set forth briefly
16 the subject matter for consideration or drafts of trade
17 practice rules proposed by the commissioner or persons
18 affected. Each such conference shall be presided over by
19 the commissioner or a member of his staff designated by
20 him. Any such trade practice conference may submit to
21 the commissioner its recommendations as to rules, reg-
22 ulations or standards defining certain methods of compe-
23 tition, acts or practices as being fair or unfair, deceptive
24 or not deceptive, within the meaning of this section. The
25 scope of such trade conference shall be limited to the
26 phase of the insurance business directly represented by
27 those persons or insurers notified by the commissioner or
28 attending such conference upon notice from the commis-
29 sioner. The commissioner shall give due consideration to
30 the recommendations, or objections, of any such trade
31 practice conference which has acted under the authority

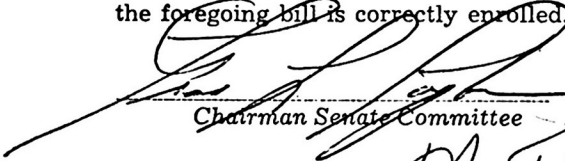
32 of this section. If he shall find that a proposed rule is in
33 the public interest and does not, in his opinion, sanction,
34 aid or abet a practice contrary to law, he may promul-
35 gate a rule, regulation or standard, enforceable under the
36 provisions of this article, applicable thereto, until modi-
37 fied or rescinded as herein provided. Before any such rule,
38 regulation or standard shall be promulgated under the
39 provisions of this section, the commissioner shall advise
40 all persons or insurers as defined in this article who would
41 be directly affected thereby and shall give thirty days'
42 notice in writing to such persons or insurers to file their
43 objections, if any. Trade practice rules, regulations or
44 standards promulgated under this section may be amend-
45 ed or rescinded by the commissioner upon his own motion,
46 or upon motion of any directly affected person or insurer,
47 after the commissioner shall have given reasonable notice
48 to the persons or insurers directly affected thereby, and
49 after there has been a hearing, if requested by such af-
50 fected persons or insurers, concerning such amendment
51 or recession: Provided, That such request is made in writ-
52 ing within thirty days after notice is given. Any order


53 or decision of the commissioner under this section shall
54 be subject to review as provided in section thirteen, article
55 two of this chapter.

56 (b) The powers vested in the commissioner by this sec-
57 tion shall be in addition to any other powers authorized
58 by law and shall not be construed as limiting the authority
59 vested in the commissioner to promulgate rules, regula-
60 tions or standards generally, and shall not limit his right
61 to publish formal or informal opinions as to acts or prac-
62 tices being legal or illegal, fair or unfair, deceptive or not
63 deceptive, within the meaning of this article.

Sec. 15. *Separability Provision.*—If any provision of this
2 act, or the application of such provision to any person or
3 circumstances, shall be held invalid, the remainder of the
4 act and the application of such provision to persons or
5 circumstances other than those as to which it is held in-
6 valid, shall not be affected thereby.

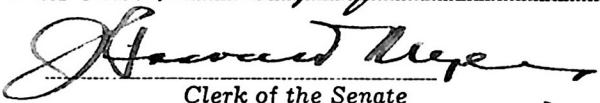
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.



Chairman Senate Committee

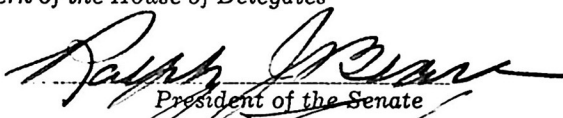

Chairman House Committee

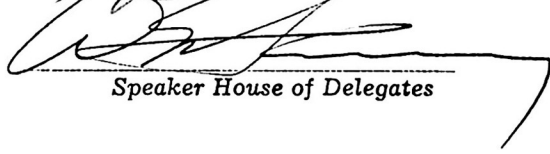
Originated in the House of Delegates

Takes effect 90 days from passage.

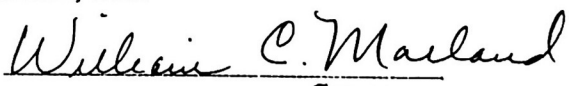

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within approved this the 14
day of March, 1955.


Governor

Filed In the Office of the Secretary of State
MAR 15 1955
of West Virginia
D. PITT O'BRIEN
SECRETARY OF STATE