WEST VIRGINIA CODE CHAPTER 33 ARTICLE 11

WV Legislature

§33-11-1. Declaration of purpose.

The purpose of this article is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945 (Public Law fifteen, seventy-ninth Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

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§33-11-2. Definitions.

As used in this article:

(a) "Person" includes any individual, company, insurer, association, organization, society, reciprocal, business trust, corporation, or any other legal entity, including agents and brokers. "Person" also includes hospital service corporations, medical service corporations and dental service corporations as defined in article twenty-four of this chapter, and health care corporations as defined in article twenty-five of this chapter. For purposes of this article hospital service corporations, medical service corporations, dental service corporations, and health care corporations shall be deemed to be in the business of insurance.

(b) "Commissioner" means the Insurance Commissioner of West Virginia.

(c) "Insurance policy" or "insurance contract" means the contract effecting insurance, or the certificate thereof, by whatever name called, and includes all clauses, riders, endorsements and papers attached thereto and a part thereof.

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§33-11-3. Unfair methods of competition and unfair or deceptive acts or practices prohibited.

No person shall engage in this state in any trade practice which is defined in this article as, or determined pursuant to section seven of this article to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

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§33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) Misrepresentation and false advertising of insurance policies. -- No person shall make, issue, circulate, or cause to be made, issued or circulated, any estimate, circular, statement, sales presentation, omission or comparison which:

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy; or

(b) Misrepresents the dividends or share of the surplus to be received on any insurance policy; or

(c) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; or

(d) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; or

(e) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or

(f) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy; or

(g) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) Misrepresents any insurance policy as being shares of stock.

(2) False information and advertising generally. -- No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive or misleading.

(3) Defamation. -- No person shall make, publish, disseminate or circulate, directly or indirectly, or aid, abet or encourage the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person and which is calculated to injure the person.

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(4) Boycott, coercion and intimidation. -- No person shall enter into any agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(5) False statements and entries. -- (a) No person shall knowingly file with any supervisory or other public official, or knowingly make, publish, disseminate, circulate or deliver to any person, or place before the public, or knowingly cause directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

(b) No person shall knowingly make any false entry of a material fact in any book, report or statement of any person or knowingly omit to make a true entry of any material fact pertaining to the business of any person in any book, report or statement of such person.

(6) Stock operations and advisory board contracts. -- No person shall issue or deliver or permit agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Unfair discrimination. -- (a) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract.

(b) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium policy fees, or rates charged for any policy or contract of accident and sickness insurance or in the benefits payable thereunder, or in any of the terms or conditions of the contract, or in any other manner whatever.

(c) As to kinds of insurance other than life and accident and sickness, no person shall make or permit any unfair discrimination in favor of particular persons, or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charge therefor. This paragraph shall not apply as to any premium or premium rate in effect pursuant to article twenty of this chapter.

(8) Rebates. -- (a) Except as otherwise expressly provided by law, no person shall knowingly permit or offer to make or make any contract of life insurance, life annuity, or accident and sickness insurance, or agreement as to any contract other than as plainly expressed in the insurance contract issued thereon, or pay or allow or give or offer to pay, allow or give, directly or indirectly, as inducement to any insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits

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thereon, or any valuable consideration or inducement whatever not specified in the contract; or give or sell, or purchase or offer to give, sell or purchase as inducement to any insurance contract or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in subdivision (7) or paragraph (a) of subdivision (8) of this section shall be construed as including within the definition of unfair discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums, in whole or in part, out of surplus accumulated from nonparticipating insurance: Provided, That any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(ii) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(iii) Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(iv) Issuing life or accident and sickness policies on a salary savings or payroll deduction plan at a reduced rate commensurate with the savings made by the use of the plan.

(c) With respect to insurance other than life, accident and sickness, ocean marine or marine protection and indemnity insurance, no person shall knowingly charge, demand or receive a premium for the insurance except in accordance with an applicable filing on file with the commissioner. No person shall pay, allow or give, directly or indirectly, either as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. No insured named in a policy of insurance, nor any relative, representative or employee of the insured shall knowingly receive or accept directly or indirectly, any rebate, discount, abatement, credit or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents and brokers, nor as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond.

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(9) Unfair claim settlement practices. -- No person shall commit or perform with such frequency as to indicate a general business practice any of the following:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered;

(h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured;

(j) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Failing to promptly settle claims, where liability has become reasonably clear, under one

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portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(n) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(o) Failing to notify the first party claimant and the provider(s) of services covered under accident and sickness insurance and hospital and medical service corporation insurance policies whether the claim has been accepted or denied and if denied, the reasons therefor, within fifteen calendar days from the filing of the proof of loss: Provided, That should benefits due the claimant be assigned, notice to the claimant shall not be required: Provided, however, That should the benefits be payable directly to the claimant, notice to the health care provider shall not be required. If the insurer needs more time to investigate the claim, it shall so notify the first party claimant in writing within fifteen calendar days from the date of the initial notification and every thirty calendar days, thereafter; but in no instance shall a claim remain unsettled and unpaid for more than ninety calendar days from the first party claimant's filing of the proof of loss unless, as determined by the Insurance Commissioner: (1) There is a legitimate dispute as to coverage, liability or damages; or (2) the claimant has fraudulently caused or contributed to the loss. In the event that the insurer fails to pay the claim in full within ninety calendar days from the claimant's filing of the proof of loss, except for exemptions provided above, there shall be assessed against the insurer and paid to the insured a penalty which will be in addition to the amount of the claim and assessed as interest on the claim at the then current prime rate plus one percent. Any penalty paid by an insurer pursuant to this section shall not be a consideration in any rate filing made by the insurer.

(10) Failure to maintain complaint handling procedures. -- No insurer shall fail to maintain a complete record of all the complaints which it has received since the date of its last examination under section nine, article two of this chapter. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this subsection, "complaint" shall mean any written communication primarily expressing a grievance.

(11) Misrepresentation in insurance applications. -- No person shall make false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

(12) Failure to maintain privacy of consumer financial and health information. -- Any licensee who violates any provision of the commissioner's rule relating to the privacy of consumer financial and health information shall be deemed to have violated the provisions of this article: Provided, That any licensee who complies with the provisions of this subsection, a commissioner's rule, or a court order shall not be deemed to be in violation of any other

provisions of sections three and four of this article by their compliance with this subsection, the rule or court order. For purposes of this subsection, "licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to this chapter.

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§33-11-4a. Complaints by third-party claimants; elimination of private cause of action.

(a) A third-party claimant may not bring a private cause of action or any other action against any person for an unfair claims settlement practice. A third-party claimant's sole remedy against a person for an unfair claims settlement practice or the bad faith settlement of a claim is the filing of an administrative complaint with the Commissioner in accordance with subsection (b) of this section. A third-party claimant may not include allegations of unfair claims settlement practices in any underlying litigation against an insured.

(b) A third-party claimant may file an administrative complaint against a person for an alleged unfair claims settlement practice with the Commissioner. The administrative complaint shall be filed as soon as practicable but in no event later than one year following the actual or implied discovery of the alleged unfair claims settlement practice.

(1) The administrative complaint shall be on a form provided by the Commissioner and shall state with specificity the following information and such other information as the Commissioner may require:

(A) The statutory provision, if known, which the person allegedly violated;

(B) The facts and circumstances giving rise to the violation;

(C) The name of any individual or other entity involved in the violation; and

(D) Reference to specific policy language that is relevant to the violation, if known.

(2) If the administrative complaint is deficient, the Commissioner shall contact the third-party claimant within fifteen days of receipt of the complaint to obtain the necessary information.

(3) Upon receipt of a sufficiently complete administrative complaint, the Commissioner must provide the person against whom the administrative complaint is filed written notice of the alleged violation.

(4) If the person against whom the administrative complaint was filed substantially corrects the circumstances that gave rise to the violation or offers to resolve the complaint in a manner found reasonable by the Commissioner within sixty days after receiving the notice from the Commissioner pursuant to subdivision (3) of this subsection, the Commissioner shall close the complaint and no further action shall lie on the matter, either by the Commissioner or by the third party.

(5) The person that is the recipient of a notice from the Commissioner pursuant to subdivision (3) of this subsection shall report to the Commissioner on the disposition of the alleged violation within fifteen days of the disposition but no later than sixty days from receipt of notice of the complaint from the Commissioner.

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(c) If the third-party claim is not resolved within the sixty-day period described in subdivision (4), subsection (b) of this section through either the person's substantial correction of the circumstances giving rise to the alleged violation or an offer from the person to resolve the administrative complaint that is found to be reasonable by the Commissioner, the Commissioner shall conduct any investigation he or she considers necessary to determine whether the allegations contained in the administrative complaint are meritorious.

(d) Following the time period and investigation provided in subsection (c) of this section, if the Commissioner finds that merit exists for a complaint and the complaint has not been resolved, the Commissioner shall forward a complete copy of the complaint to the Office of Consumer Advocacy and, if at his or her discretion, may order further investigation and hearing to determine if the person has committed an unfair claims settlement practice with such frequency as to constitute a general business practice. Notice of any hearing shall be provided to all parties. The Commissioner shall assign a time and place for a hearing and shall notify the parties of the hearing by written notice at least ten days in advance thereof. The hearing shall be held within ninety days from the date of filing the complaint unless the complaint has been successfully resolved pursuant to subdivision (4), subsection (b) of this section or continued by agreement of all parties or by the Commissioner for good cause. The Commissioner shall cause hearings to be conducted in the geographical region of the state where the complainant resides. The Commissioner may promulgate rules pursuant to article three, chapter twenty-nine-a of this code necessary, pursuant to the authority of this chapter, to establish procedures to conduct hearings pursuant to this section and chapter.

(e) If the Commissioner finds that the person has committed the unfair claim settlement practice with such frequency as to constitute a general business practice, the Commissioner may proceed to take administrative action he or she considers appropriate in accordance with section six of this article or as otherwise provided in this chapter. If the Commissioner finds that the person engaged in any method of competition, act or practice that involves an intentional violation of subdivision (9), section four of this article, and even though it has not been established that the person engaged in a general business practice, the Commissioner may proceed to take administrative action he or she considers appropriate in accordance with subsection (b), section six of this article. The person is entitled to notice and hearing in connection with the administrative proceeding.

(f) A finding by the Commissioner that the actions of a person constitute a general business practice may only be based on the existence of substantially similar violations in a number of separate claims or causes of action.

(g) A good faith disagreement over the value of an action or claim or the liability of any party to any action or claim is not an unfair claims settlement practice.

(h) The Commissioner, pursuant to article three, chapter twenty-nine-a of this code, may promulgate by emergency rule standards for subsection (9), section four of this article.

(i) Nothing in this section in any way limits the rights of the Commissioner to investigate and

take action against a person which the Commissioner has reason to believe has committed an unfair claims settlement practice or has consistently resolved administrative complaints by third-party claimants within the sixty-day period set forth in subdivision (4), subsection (b) of this section.

(j) Definitions:

(1) "Third-party claimant" means any individual, corporation, association, partnership or any other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract for the claim in question.

(2) "Unfair claims settlement practice" means a violation of subsection (9), section four of this article.

(3) "Underlying litigation" means a third-party claimant's lawsuit involving a claim against an insured.

(4) "Underlying claim" means the claim by a third-party claimant against an insured.

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§33-11-4b. Unfair Claims Settlement Practice Trust Fund.

(a) There is hereby created a special account in the state Treasury designated the Unfair Claims Settlement Practice Trust Fund, which shall be an interest-bearing account and may be invested in the manner permitted by section nine, article six, chapter twelve of this code, with the interest income or other refund earned thereon a proper credit to the fund. Funds paid into the account may also be derived from the following sources:

(1) Payments received pursuant to section nine, article two of this chapter; and

(2) Any appropriations by the Legislature which may be made for this purpose.

(b) The moneys from the principal in the fund shall be expended by the Commissioner to compensate claimants as provided in sections four-a and six of this article.

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§33-11-5. Favored agent or insurer; coercion of debtors.

(a) No person may:

(1) Require, as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers;

(2) Unreasonably disapprove the insurance policy provided by a borrower for the protection of the property securing the credit or lien;

(3) Require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another; or

(4) Use or disclose information resulting from a requirement that a borrower, mortgagor or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when such information is to the advantage of the mortgagee, vendor, or lender, or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with such a requirement.

(b) (1) Subdivision (3), subsection (a) does not include the interest which may be charged on premium loans or premium advancements in accordance with the security instrument.

(2) For purposes of subdivision (2), subsection (a) such disapproval shall be deemed unreasonable if it is not based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required.

(3) The commissioner may investigate the affairs of any person to whom this subsection applies to determine whether such person has violated this subsection. If a violation of the subsection is found, the person in violation shall be subject to the same procedures and penalties as are applicable to other provisions of this article.

(4) For purposes of this section, "person" includes any individual, corporation, association, partnership, or other legal entity.

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§33-11-5a. Replacement of life insurance.

(a) As used in this section:

(1) "Replacement" means any transaction in which new life insurance is to be purchased and by reason of such transaction existing life insurance has been or is to be:

(A) Lapsed, forfeited, surrendered or otherwise terminated;

(B) Converted to reduced paid-up insurance, continued as extended term insurance or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(C) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) Reissued with any reduction in cash value; or

(E) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy;

(2) "Existing insurer" means the insurance company whose existing life insurance policy is or will be terminated or otherwise affected in a replacement transaction;

(3) "Replacing insurer" means the insurance company, including the same insurer or an insurer in the same group of affiliated insurers, that issues new life insurance in a replacement transaction; and

(4) "Existing life insurance" means any life insurance in force including life insurance under a binding or conditional receipt or a life insurance policy that is within an unconditional refund period, but excluding life insurance obtained through the exercise of a dividend option.

(b) No replacing insurer shall issue any life insurance in a replacement transaction to replace existing life insurance unless the replacing insurer shall agree in writing with the insured that:

(1) The new life insurance issued by the replacing insurer will not be contestable by it in the event of such insured's death to any greater extent than the existing life insurance would have been contestable by the existing insurer had such replacement not taken place provided, however, that this paragraph shall not apply to that amount of insurance written and issued which exceeds the amount of the existing life insurance; and

(2) The new life insurance issued by the replacing insurer may be voluntarily surrendered by the insured at any time within thirty (30) days after its delivery to the insured in exchange for a full refund of premiums paid by the replacing insurer to the insured.

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(c) Unless otherwise specifically included, subsection (b) of this section shall not apply to:

(1) Annuities;

(2) Individual credit life insurance;

(3) Group life insurance, group credit life insurance and life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, provided, however, that as to any plan described in this subsection, full and complete disclosure of all material facts shall be given to the administrator of any plan to be replaced;

(4) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account;

(5) An application to the existing insurer that issued the existing life insurance and a contractual policy change or conversion privilege or a privilege of policy change granted by the insurer is being exercised;

(6) Existing life insurance that is a nonconvertible term life insurance policy which will expire in five (5) years or less and cannot be renewed; or

(7) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

(d) For purposes of inducing or attempting to induce a policyholder to lapse, forfeit, borrow against, surrender, retain, exchange, modify, convert, or otherwise alter or dispose of any insurance policy or coverage, no person shall:

(1) Prepare, make or issue, or cause to be prepared, made or issued, any written or oral misrepresentation of a material fact regarding the terms, conditions or benefits of either existing insurance coverage or proposed replacement insurance coverage; or

(2) Omit information concerning a material fact regarding the terms, conditions or benefits of either existing insurance coverage or proposed replacement insurance coverage.

(e) The provisions of this section shall have no further force and effect as of the effective date of the emergency rule authorized by the provisions of section forty-eight, article thirteen of this chapter.

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§33-11-6. Violations, cease and desist and penalty orders and modifications thereof.

If, after notice and hearing, the Commissioner determines that any person has engaged in or is engaging in any method of competition, act or practice in violation of the provisions of this article or any rules or regulations promulgated by the Commissioner thereunder, the Commissioner shall issue an order directing the person to cease and desist from engaging in the method of competition, act or practice and, in addition thereto, the Commissioner may at his or her discretion order any one or more of the following:

(a) Require the payment to the State of West Virginia of a penalty in a sum not exceeding $1,000 for each and every act or violation, but not to exceed an aggregate penalty of $10,000, unless the person knew or reasonably should have known he or she was in violation of this article, in which case the penalty shall not exceed $5,000 for each and every act or violation, but not to exceed an aggregate penalty of $100,000 in any six-month period.

(b) In the event the act involves an intentional violation of subdivision (9), section four of this article, and even though it has not been established that the person engaged in a general business practice, require the payment to the State of West Virginia of a penalty in a sum not to exceed $10,000.

(c) Require the payment to the State of West Virginia of a penalty in a sum not exceeding $250,000 if the Commissioner finds that the insurer committed or performed unfair claims settlement practices with such frequency as to indicate a general business practice.

(d) Revoke or suspend the license of any person if he or she knew, or reasonably should have known, that he or she was in violation of this article.

(e)(1) Provide restitution from the Unfair Claims Settlement Practice Trust Fund to a claimant who has suffered damages as a result of a general business practice or from an egregious act by a person whether or not the act constituted a pattern corresponding to an unfair claim settlement practice committed with such frequency as to constitute a general business practice.

(2) Restitution provided herein may include: (A) Actual economic damages; and (B) noneconomic damages not to exceed $10,000. Restitution may not be given for attorney fees and punitive damages.

(f) It is expressly understood and intended that the provisions of paragraph (1), subdivision (e) of this section do not create a private cause of action against the person that has committed an unfair claims settlement practice. In the event that any provision of said paragraph is found to be unconstitutional or is deemed by any court of competent jurisdiction to create a private cause of action, then subdivision (e) shall be void.

(g) Any person aggrieved by an order of the Commissioner under this article may seek judicial review of the order as provided in section fourteen, article two of this chapter.

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(h) No order of the Commissioner pursuant to this article or order of any court to enforce it, or holding of a hearing, shall in any manner relieve or absolve any person affected by the order or hearing from any other liability, penalty or forfeiture under law.

(i) The provisions of section four-a of this article and subdivision (e) of this section do not apply to medical professional liability insurance claims pursuant to article seven-b, chapter fifty-five of this code and Workers Compensation insurance policies governed by article two-c, chapter twenty-three of this code.

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§33-11-7. Undefined acts or practices.

If, after notice and hearing, the commissioner determines that any person transacting insurance is engaging in this state in any method of competition or act or practice in the transaction of such insurance which is not defined in this article, and that such method of competition is unfair or such act or practice is unfair or deceptive, the commissioner shall issue an order directing such person to cease and desist from engaging in such method of competition, act or practice.

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§33-11-8. Penalty for violation of cease and desist orders.

If, after notice and hearing, the commissioner determines that any person has violated a cease and desist order issued by the commissioner and which such order is still in effect, the commissioner may at his discretion order any one or more of the following:

(a) Require the payment to the State of West Virginia of a penalty in a sum not exceeding $10,000 for each and every act or violation.

(b) Revoke or suspend the license of such person.

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§33-11-9. Provisions of article additional to existing law.

The powers vested in the commissioner by this article, shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

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§33-11-10. Severability.

In the event any provision of this article, or the application of such provision to any person or circumstance, shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the remainder of this article or the application of the provisions to other persons or circumstances shall not be affected thereby.

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