ENROLLED
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 of this state, hereby designated subscribers, are hereby authorized to exchange reciprocal or inter-insurance contracts with each other or with individuals, partnerships and corporations of other states and countries providing indemnity among themselves from any loss which may be insured against under other provisions of the law excepting life insurance and health and accident insurance. Such contracts and the exchange thereof and subscribers, their attorneys-in-fact and representatives shall be regulated by this act, by sections forty-two and forty-five, article two, chapter thirty-three; sections nine, eleven and twelve, article four, chapter thirty-three; and section one, article one, chapter fifty-six of the code of
West Virginia, one thousand nine hundred thirty-one, as last amended, and by no other part of said chapter thirty-three and no other insurance law unless such law is referred to in this act, and no law hereafter enacted shall apply to them, unless they be expressly designated therein. Wherever in said sections forty-two and forty-five, article two and section nine, article four, chapter thirty-three, the word company is used, it shall be deemed to mean attorney-in-fact when such sections are applied to reciprocal or inter-insurance exchanges or contracts.

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

Sec. 3. Such attorney-in-fact shall file with the insurance commissioner of this state a declaration verified by the oath of such attorney-in-fact, or when such attorney-in-fact is a corporation, by the oath of a chief officer thereof, setting forth:
(a) The name of the attorney-in-fact and the name or designation under which such contracts are to be issued, which name or designation shall not be so similar to any other name or designation previously adopted by any attorney-in-fact or any insurance organization in this state so as to confuse or deceive;

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

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

(d) A copy of the form of power of attorney or other authorization of such attorney-in-fact under or by which such insurance to be effected or exchanged;
(e) The location of the office or offices from which such contracts or agreements are to be issued;

(f) That except as to the kinds of insurance herein-after specifically mentioned in this sub-division, applications shall have been made for indemnity upon at least twenty separate risks aggregating not less than five-hundred thousand dollars represented by executed contracts or bona fide applications to become concurrently effective. In the case of automobile insurance, applications shall have been made for indemnity upon at least two hundred motor vehicles represented by executed contracts or bona fide applications to become concurrently effective on any or all classes of automobile insurance effected by said subscribers through said attorney-in-fact. In the case of airplane insurance, applications shall have been made for indemnity upon at least twenty-five airplanes represented by executed contracts or bona fide applications to become concurrently effective;

(g) That there is in the possession of such attorney-in-fact and available for the payment of losses, assets conforming to the requirements of section six hereof;
(h) A financial statement in form prescribed by the insurance commissioner for the annual statement;

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

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

Such service or acceptance of service shall be valid and
binding upon such attorney-in-fact and upon all sub-
scribers exchanging at any time reciprocal or inter-
insurance contracts through such attorney-in-fact. Two
copies of such process or notice, in addition to the original,
shall be furnished the auditor, and he shall file one copy,
forward one copy to said attorney-in-fact and return the
original with his acceptance of service or for return of
service. But no process or notice shall be served on the
auditor or accepted by him less than ten days before
the return day thereof. Where the principal office of the
attorney-in-fact is located in this state, service of process
may be had upon all subscribers by serving same upon
the attorney-in-fact at said office. Service of process shall
not be had upon said subscribers or any of them in any
suit or other proceeding in this state except in the man-
ner provided in this section, and any action, suit, or other
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
similar funds of insurance companies doing the same kind of business, an amount equal to fifty per cent of the net annual advance premiums or deposits collected and credited to the accounts of subscribers on policies having one year or less to run, and pro rata on those for longer periods; or in lieu thereof, one hundred per cent of the net unearned premiums or deposits collected and credited to the accounts of subscribers. In addition to the assets previously provided for in this section, there shall also be maintained on deposit at the exchange, a surplus fund in cash or such securities of not less than fifty thousand dollars. There shall also be maintained as a claim or loss reserve, in cash or such securities, sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks. If at any time the amounts on hand are less than the foregoing requirements, the subscribers or their attorney-in-fact for them shall make up the deficiency. If it appears that the amount of funds required in this section has
not been accumulated, then the subscribers or the at-
torney-in-fact for them shall immediately advance such
sums as are needed to comply with the provisions of this
section, and the funds so advanced shall not be treated
as a liability at the exchange and shall not be withdrawn
except with the approval of the insurance commissioner
of the state wherein the exchange is domiciled, and such
advances shall be repaid only out of the surplus funds
of the exchange.

Sec. 7. Said attorney-in-fact shall make an annual
report to the insurance commissioner for each calendar
year on or before the expiration of the license period,
which license period shall correspond to that of other
insurance organizations licensed in this state for the
transaction of the same class of business. Such license
may be extended by the insurance commissioner for not
exceeding sixty days upon his extending the time for
filing the annual statement. Such annual statement shall
show that the financial condition of affairs at the office
where such contracts are issued is in accordance with
the standard of solvency provided for herein, and shall
furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers and the amounts retained for expenses:

Provided, however, That such attorney-in-fact shall not be required to furnish the names and addresses of any subscribers except of those holding unpaid final judgments. The business affairs and assets of said reciprocal or inter-insurance exchanges, as shown at the office of the attorney-in-fact thereof, shall be subject to examination by the insurance commissioner at the expense of such exchange, at least once in every three years.

Sec. 8. Any corporation now or hereafter organized under the laws of this state, shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incident to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred.
Sec. 9. No such attorney-in-fact or other person shall directly or indirectly solicit or negotiate any application for contracts of indemnity of the kind and character specified in this act or do any act in the organization of any such exchange until he shall first have filed with the insurance commissioner a copy of the form of policy contract and power of attorney with a statement of the plan or organization and except as aforesaid no such attorney-in-fact or other person shall solicit or accept any such applications for contracts or indemnity; and no such attorney-in-fact shall put into effect or exchange any such contracts of indemnity of the kind and character mentioned in this act without first complying with all of the provisions thereof.

Sec. 10. Except as hereinafter provided, upon compliance with the foregoing requirements of this act, the insurance commissioner shall issue a certificate of authority to the attorney-in-fact in the name and title of the office mentioned in subdivision (a) of section three. The insurance commissioner may revoke or suspend any certificate of authority issued hereunder in case of
breach of any of the conditions imposed by this act after
reasonable notice has been given said attorney-in-fact in
writing so that he may appear and show cause why such
action should not be taken. Any attorney-in-fact who
may have procured a certificate of authority hereunder
shall have the same renewed annually thereafter: Pro-
vided, however, That any certificate of authority issued
shall continue in force and effect until a new certificate
of authority is issued or specifically refused.
The insurance commissioner may refuse to issue a
certificate of authority to any attorney-in-fact if in his
judgment such refusal will best promote the interests of
the people of this state. When the insurance commis-
sioner upon investigation is satisfied that any attorney-
in-fact acting under his supervision and holding a license,
or certificate of authority from him, is insolvent, or has
failed to comply with or is violating the insurance laws
of this state applicable to such attorney-in-fact, or is
conducting business fraudulently, or is not carrying out
its contracts in good faith, he shall begin proceedings
for the revocation of the license or certificate of au-
thority of such attorney-in-fact.
When the insurance commissioner, on application, shall refuse to issue any license, or certificate of authority, or when he shall proceed to revoke the same, whether for any of the reasons aforesaid or in pursuance of any other provision of this act, the attorney-in-fact shall be furnished a statement of the reasons for such failure to issue or revocation and shall be given thirty days notice of the time and place of a hearing at which the insurance commissioner will proceed to determine whether such license, or certificate, shall be finally refused, or shall be revoked, as the case may be. Such statement and notice shall be given by mailing the same addressed to the attorney-in-fact at the latest address furnished said insurance commissioner by the attorney-in-fact, by registered mail, the mailing to be at such a time that the statement and notice should reach its destination by due course of mail not less than thirty days before such hearing. The attorney-in-fact may appear with witnesses, and may be heard through its officers or agents, or by counsel, or both. The insurance commissioner may take such oral or written proof, for or against the issuance
or revocation, as he may deem advisable, or such attorney-in-fact may request. If upon the hearing the commissioner finds that the reasons stated for refusing or revoking the license are true, he may finally refuse to issue, or may revoke, the license, or certificate of authority. A stenographic report of each proceeding under this section shall be made at the expense of the commissioner, and a transcript thereof retained in his files, and he shall make a written report of his findings, which shall constitute a part of the record.

Any attorney-in-fact, the application of which for a license has been refused, or the license of which has been revoked, in the manner aforesaid, may, within thirty days after the decision of the insurance commissioner upon the hearing aforesaid, present its petition in writing to the circuit court of the county in which the seat of government of this state is situated, or to the judge of such court in vacation, praying for a review and reversal of such decision. Before presenting its petition to the court or judge, the petitioner shall mail a copy thereof to the insurance commissioner. Upon the receipt of such copy,
the insurance commissioner shall forthwith transmit
to the clerk of such court the record of the proceedings
before him. The court or judge shall fix a time for the
review of said proceedings at his earliest convenience.
Notice in writing of the time and place of such hearing
shall be given to the insurance commissioner at least
ten days before the date set therefor. The court or judge
shall, without a jury, hear and determine the case upon
the record of the proceedings before the insurance com-
misssioner. The court or judge may enter an order re-
vising or reversing the decision of the insurance com-
misssioner, if it appears that the decision was clearly
wrong, or may affirm such decision. The judgment of
the circuit court or judge may be reviewed upon appeal
in the supreme court of appeals: Provided, That nothing
contained in this section shall be taken or construed as
preventing any such attorney-in-fact from continuing in
good faith all contracts made in this state during the
time such attorney-in-fact was legally authorized to
transact business therein.
When any license, or certificate of authority, has been
revoked by the insurance commissioner under the provisions of the preceding paragraph, the same may, except where it is otherwise specially provided by law, be re-issued by him when he is satisfied that the conditions causing the revocation have ceased to exist.

Sec. 11. Such attorney-in-fact shall pay into the state treasury the sum of ten dollars as an annual license fee, and a tax of two percent of the gross premiums or deposits collected from West Virginia subscribers during the preceding calendar year, less cancellations and all amounts returned to subscribers or credited to their accounts as savings; and in addition to the foregoing taxes and fees, such attorney-in-fact shall pay an annual premium tax of one-half of one per cent of said premiums for fire policies for the support of the state fire marshal's department; and such license fees and taxes shall be in lieu of all license fees and taxes of whatever character in this state.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Charles C. Morris
Chairman Senate Committee

Jack Swaggerty
Chairman House Committee

originated in the Senate

taken effect from passage

Howard Negus
Clerk of the Senate

D.C. Phillips
Clerk of the House of Delegates

Donald W. Bowers
President of the Senate

John P. Boone
Speaker House of Delegates

The within [Approved] this the 27th
day of March, 1945.

Owen Brown
Governor

Filed in the office of the Secretary of State
of West Virginia MAR 2, 1945

Wm. S. O'Brien,
Secretary of State