

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945

ENROLLED

SENATE BILL No. 73

(By Mr. Hardesty and Hall of Raleigh)

PASSED February 27 1945

In Effect 90-days from Passage

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



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Reed
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Senate Bill No. 73

(BY MESSRS. HARDESTY, AND HALL OF RALEIGH)

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

AN ACT to amend and reenact sections seven and eight, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, prescribing the form of fire insurance policies and of endorsements and contract supplementary thereto for use in this state.

Be it enacted by the Legislature of West Virginia:

That section nine, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, be repealed and that sections seven and eight of said article be amended and reenacted to read as follows:

Sec. 7. *Form of Fire Policies.*—(a) The printed form
2 of a policy of fire insurance, as set forth in subsection (f)

3 shall be known and designated as the standard fire insur-
4 ance policy of the state of West Virginia.

5 (b) No policy or contract of fire insurance shall be
6 made, issued or delivered by any insurer or by any agent
7 or representative thereof, on any property in this state,
8 unless it shall conform as to all provisions, stipulations,
9 agreements and conditions, with such form of policy:
10 *Provided, however,* That any company organized under
11 special charter provisions may so indicate upon its policy,
12 and may add a statement of the plan under which it
13 operates in this state.

14 There shall be printed at the head of said policy the
15 name of the insurer or insurers issuing the policy; the
16 location of the home office thereof; a statement whether
17 said insurer or insurers are stock or mutual corporations;
18 and there may be added thereto such device or devices
19 as the insurer or insurers issuing said policy shall desire.

20 The standard fire insurance policy provided for herein
21 need not be used for effecting reinsurance between in-
22 surers.

23 If the policy is issued by a mutual insurer having special
24 regulations with respect to the payment by the policy-
25 holder of assessments, such regulations shall be printed
26 upon the policy, and any such insurer may print upon
27 the policy such regulations as may be appropriate to or
28 required by its form of organization.

29 (c) Binders or other contracts for temporary insur-
30 ance may be made, orally or in writing, for a period
31 which shall not exceed fifteen days, and shall be deemed
32 to include all the terms of such standard fire insurance
33 policy and all such applicable endorsements, approved
34 by the insurance commissioner, as may be designated in
35 such contract of temporary insurance; except that the
36 cancellation clause of such standard fire insurance policy,
37 and the clause thereof specifying the hour of the day at
38 which the insurance shall commence, may be superseded
39 by the express terms of such contract of temporary
40 insurance.

41 (d) Two or more insurers authorized to do in this
42 state the business of fire insurance, may, with the appro-
43 val of the insurance commissioner, issue a combination

44 standard form of fire insurance policy which shall contain
45 the following provisions:

46 (1) A provision substantially to the effect that the
47 insurers executing such policy shall be severally liable
48 for the full amount of any loss or damage, according to
49 the terms of the policy, or for specified percentages or
50 amounts thereof, aggregating the full amount of such
51 insurance under such policy;

52 (2) A provision substantially to the effect that service
53 of process, or of any notice or proof of loss required
54 by such policy, upon any of the insurers executing such
55 policy, shall be deemed to be service upon all such
56 insurers.

57 (e) Appropriate forms of supplemental contract or
58 contracts or extended coverage endorsements whereby
59 the interest in the property described in such policy
60 shall be insured against one or more of the perils which
61 the insurer is empowered to assume, in addition to the
62 perils covered by said standard fire insurance policy,
63 may be approved by the insurance commissioner, and
64 their use in connection with a standard fire insurance

65 policy may be authorized by him. The first page of the
66 policy may in form approved by the insurance com-
67 missioner be rearranged to provide space for the listing
68 of amounts of insurance, rates and premiums for the
69 basic coverages insured under the standard form of policy
70 and for additional coverages or perils insured under
71 endorsements attached, and such other data as may be
72 conveniently included for duplication on daily reports
73 for office records.

74 (f) The form of the standard fire insurance policy of
75 the state of West Virginia (with the right to number the
76 lines, if desired, in the provisions and stipulations on page
77 two of the form and to substitute for the word "company"
78 a more accurate descriptive form for the type of insurer)
79 shall be as follows:

No.

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.]

[Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.]

In Consideration of the Provisions and Stipulations herein or added hereto and of.....Dollars Premium

6

this company, for the term { from the.....day of....., 19..... } at noon, Standard Time, at of..... { to the.....day of....., 19..... } location of property involved, to an amount not exceeding.....Dollars, does insure.....

and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more

than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at.....

7

Secretary.

President.

Countersigned this _____ day of _____, 19____

Agent.

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Concealment, fraud.

This entire policy shall be void if, whether before or after a loss, the insured has wilfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included. This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided

that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

Other Insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring

(a) while the hazard is increased by any means within the control or knowledge of the insured; or
(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or
(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance to be covered in this policy shall be

by endorsement in writing hereon or added hereto.
Added provisions. The extent of the application of

insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to appraisal or to any examination provided for herein.

Cancellation of policy. This policy shall be cancelled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this Company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid

premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgage interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mort-

gagee may be added hereto by agreement in writing.

Pro rata liability. This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this Company of

any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within sixty days after the loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether

valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.

In case the insured and this Com-

pany shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options.

It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace

the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this Company of any property.

When loss payable. The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

ATTACH FORM BELOW THIS LINE

Standard Fire Insurance Policy of the States of

Expires _____

Property _____

Assured _____

No. _____

(COMPANY)

It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once.

Sec. 8. *Additional Matter Which May Be Inserted in*
2 *Fire Policy.*—The insurance commissioner, either in per-
3 son or by any one or more competent and disinterested
4 persons specially appointed by him for that purpose,
5 shall have access to and may at any time examine the
6 books, papers and documents of any fire insurance cor-
7 poration doing business in this state, or of any corpor-
8 ation, association or bureau maintained for the purpose
9 of suggesting, approving or making rates to be used by
10 more than one underwriter for insurance on property
11 located in this state, for the purpose of determining the
12 number and extent of use of any riders, indorsements,
13 clauses, permits, forms or other memoranda attached to
14 and made a part of any fire insurance contract relating
15 to property located in this state; and after such examin-
16 ation and inspection such insurance commissioner may
17 determine that the use of any such rider, indorsement,
18 clause, permit, form or other memoranda is so exten-
19 sive that there should be in his judgment a standard
20 form thereof, and he shall thereupon prepare and file in
21 his office such standard form of rider, indorsement, clause,

22 permit, form or other memoranda, and thereafter no fire
23 insurance corporation shall attach to any such standard
24 policy of insurance, any rider, indorsement, clause, per-
25 mit, form or other memoranda covering substantially
26 the same agreement provided for by such standard rider,
27 indorsement, clauses, permit, form or other memoranda
28 except it be in the precise language of the form so
29 filed by the insurance commissioner. Forms of riders,
30 indorsements, clauses, permits, forms or other memo-
31 randa to be attached to and made a part of fire insurance
32 contracts relating to property located in this state may
33 be presented for filing in the office of the insurance com-
34 missioner by any corporation, association or bureau main-
35 tained for the purpose of suggesting, approving or mak-
36 ing rates to be used by more than one underwriter for
37 insurance on property located in this state, and when
38 approved and filed by such insurance commissioner, shall
39 thereupon become standard forms of riders, indorsements,
40 clauses, permits, forms or other memoranda and their
41 use shall be required as hereinbefore provided. Whenever,
42 in the judgment of the insurance commissioner, there

43 shall be no further necessity for requiring the use of any
44 standard form of rider, indorsement, clause, permit, form
45 or other memoranda in the precise language theretofore
46 required, he may give notice in writing of such determin-
47 ation, to each fire insurance corporation doing business
48 in this state, and to each such corporation, association or
49 bureau maintained for the purpose of suggesting, approv-
50 ing or making rates, as aforesaid, and thereafter the use
51 of such standard form shall not be required as herein
52 provided: *Provided, however,* That nothing in this section
53 or the preceding section shall relate or apply to farmers'
54 mutual insurance companies organized under article five
55 of this chapter. The insurance commissioner may, upon
56 complaint, after hearing, reduce any fire insurance rate
57 that is excessive.

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

Charles C. Morris
Chairman Senate Committee

J. Lee Granger, Jr.
Chairman House Committee

Originated in the Senate

Takes effect 90-days from passage

Lawrence Hayes
Clerk of the Senate

Ed Shipp
Clerk of the House of Delegates

Arnold M. Tucker
President of the Senate

John E. Crum
Speaker House of Delegates

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

Robert C. Byrd
Governor.

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

Wm. S. G'BRIEN,
Secretary of State

