

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949



ENROLLED

HOUSE BILL No. 347

(By Mr. Trent)



PASSED March 12 1949

In Effect From Passage



347

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House Bill No. 347

(By MR. TRENT, by request)

[Passed March 12, 1949; in effect from passage.]

AN ACT to amend and reenact section seven, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fire and marine insurance.

Be it enacted by the Legislature of West Virginia:

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

Section 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 insurance
4 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 oper-
13 ates 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 effective reinsurance between in-
22 surers.

23 If the policy is issued by a mutual insurer having spe-
24 cial 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 the
27 policy such regulations as may be appropriate to or re-
28 quired 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 which
31 shall not exceed sixty days, and shall be deemed to include
32 all the terms of such standard fire insurance policy and all
33 such applicable endorsements, approved by the insurance
34 commissioner, as may be designated in such contract of
35 temporary insurance; except that the cancellation clause
36 of such standard fire insurance policy, and the clause
37 thereof specifying the hour of the day at which the
38 insurance shall commence, may be superseded by the ex-
39 press terms of such contract of temporary insurance.
40 Earned premiums for binders or other contracts for tem-
41 porary insurance shall be computed and paid for at rates
42 approved by the insurance commissioner.

43 (d) Two or more insurers authorized to do in this state
44 the business of fire insurance, may, with the approval of
45 the insurance commissioner, issue a combination standard
46 form of fire insurance policy which shall contain the fol-
47 lowing provisions:

48 (1) A provision substantially to the effect that the in-
49 surers executing such policy shall be severally liable for

50 the full amount of any loss or damage, according to the
51 terms of the policy, or for specified percentages or amounts
52 thereof, aggregating the full amount of such insurance
53 under such policy;

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

59 (e) Appropriate forms of supplemental contract or con-
60 tracts or extended coverage endorsements whereby the
61 interest in the property described in such policy shall be
62 insured against one or more of the perils which the in-
63 surer is empowered to assume, in addition to the perils
64 covered by said standard fire insurance policy, may be
65 approved by the insurance commissioner, and their use
66 in connection with a standard fire insurance policy may
67 be authorized by him. The first page of the policy may
68 in form approved by the insurance commissioner be re-
69 arranged to provide space for the listing of amounts of
70 insurance, rates and premiums for the basic coverages

71 insured under the standard form of policy and for addi-
72 tional coverages or perils insured under endorsements at-
73 tached, and such other data as may be conveniently in-
74 cluded for duplication on daily reports for office records.

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

81 No.

82 (Space for insertion of name of company or companies
83 issuing the policy and other matter permitted to be stated
84 at the head of the policy.)

85 (Space for listing amounts of insurance, rates and
86 premiums for the basic coverages insured under the
87 standard form of policy and for additional coverages or
88 perils insured under endorsements attached.)

89 In consideration of the provisions and stipulations here-
90 in or added hereto and of Dollars
91 Premium this company, for the term of (from

92 the..... day of....., 19..... to the.....
93 day of....., 19.....) at noon, Standard
94 Time, at location of property involved, to an amount not
95 exceeding.....Dollars, does
96 insure.....and legal
97 representatives, to the extent of the actual cash value of
98 the property at the time of loss, but not exceeding the
99 amount which it would cost to repair or replace the prop-
100 erty with material of like kind and quality within a rea-
101 sonable time after such loss, without allowance for any
102 increased cost of repair or reconstruction by reason of any
103 ordinance or law regulating construction or repair, and
104 without compensation for loss resulting from interruption
105 of business or manufacture, nor in any event for more
106 than the interest of the insured, against all DIRECT LOSS
107 BY FIRE, LIGHTNING AND BY REMOVAL FROM
108 PREMISES ENDANGERED BY THE PERILS INSURED
109 AGAINST IN THIS POLICY, EXCEPT AS HEREIN-
110 AFTER PROVIDED, to the property described herein-
111 after while located or contained as described in this policy,
112 or pro rata for five days at each proper place to which

113 any of the property shall necessarily be removed for pre-
114 servation from elsewhere.

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

117 This policy is made and accepted subject to the forego-
118 ing provisions and stipulations and those hereinafter
119 stated, which are hereby made a part of this policy, to-
120 gether with such other provisions, stipulations and agree-
121 ments as may be added hereto, as provided in this policy.

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

126 _____

127 _____

128 _____ President.

129 _____ Secretary.

130 Countersigned this _____ day of _____, 19____

131 _____

132 _____ Agent.

133 *Concealment, fraud.* This entire policy shall be void if,

134 whether before or after a loss, the insured has wilfully
135 concealed or misrepresented any material fact or circum-
136 stance concerning this insurance or the subject thereof,
137 or the interest of the insured therein, or in case of any
138 fraud or false swearing by the insured relating thereto.

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

143 *Perils not included.* This Company shall not be liable
144 for loss by fire or other perils insured against in this
145 policy, caused, directly or indirectly, by: (a) enemy at-
146 tack by armed forces, including action taken by military,
147 naval or air forces in resisting an actual or an immediately
148 impending enemy attack; (b) invasion; (c) insurrection;
149 (d) rebellion; (e) revolution; (f) civil war; (g) usurped
150 power; (h) order of any civil authority except acts of
151 destruction at the time of and for the purpose of prevent-
152 ing the spread of fire, provided that such fire did not
153 originate from any of the perils excluded by this policy;
154 (i) neglect of the insured to use all reasonable means to

155 save and preserve the property at and after a loss, or
156 when the property is endangered by fire in neighboring
157 premises; (j) nor shall this Company be liable for loss by
158 theft.

159 *Other Insurance.* Other insurance may be prohibited
160 or the amount of insurance may be limited by endorse-
161 ment attached hereto.

162 *Conditions suspending or restricting insurance.* Unless
163 otherwise provided in writing added hereto this Company
164 shall not be liable for loss occurring (a) while the hazard
165 is increased by any means within the control or knowl-
166 edge of the insured; or (b) while a described building,
167 whether intended for occupancy by owner or tenant, is
168 vacant or unoccupied beyond a period of sixty consecu-
169 tive days; or (c) as a result of explosion or riot, unless
170 fire ensue, and in that event for loss by fire only.

171 *Other perils or subjects.* Any other peril to be insured
172 against or subject of insurance to be covered in this policy
173 shall be by endorsement in writing hereon or added
174 hereto.

175 *Added provisions.* The extent of the application of in-

176 surance under this policy and of the contribution to be
177 made by this Company in case of loss, and any other
178 provision or agreement not inconsistent with the provi-
179 sions of this policy, may be provided for in writing added
180 hereto, but no provision may be waived except such as by
181 the terms of this policy is subject to change.

182 *Waiver provisions.* No permission affecting this insur-
183 ance shall exist, or waiver of any provisions be valid,
184 unless granted herein or expressed in writing added here-
185 to. No provision, stipulation or forfeiture shall be held
186 to be waived by any requirement or proceeding on the
187 part of this Company relating to appraisal or to any ex-
188 amination provided for herein.

189 *Cancellation of policy.* This policy shall be cancelled
190 at any time at the request of the insured, in which case
191 this Company shall, upon demand and surrender of this
192 policy, refund the excess of paid premium above the cus-
193 tomary short rates for the expired time. This policy may
194 be cancelled at any time by this Company by giving to
195 the insured a five days' written notice of cancellation with
196 or without tender of the excess of paid premium above

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

201 *Mortgagee interests and obligations.* If loss hereunder
202 is made payable, in whole or in part, to a designated
203 mortgagee not named herein as the insured, such interest
204 in this policy may be cancelled by giving to such mor-
205 tagee a ten days' written notice of cancellation.

206 If the insured fails to render proof of loss such mortga-
207 gee, upon notice, shall render proof of loss in the form
208 herein specified within sixty days thereafter and shall
209 be subject to the provisions hereof relating to appraisal
210 and time of payment and of bringing suit. If this Com-
211 pany shall claim that no liability existed as to the mort-
212 gator or owner, it shall, to the extent of payment of loss
213 to the mortgagee, be subrogated to all the mortgagee's
214 rights of recovery, but without impairing mortgagee's
215 right to sue; or it may pay off the mortgage debt and
216 require an assignment thereof and of the mortgage. Other
217 provisions relating to the interests and obligations of such

218 mortgagee may be added hereto by agreement in writing.

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

224 *Requirements in case loss occurs.* The insured shall
225 give immediate written notice to this Company of any
226 loss, protect the property from further damage, forthwith
227 separate the damaged and undamaged personal property,
228 put it in the best possible order, furnish a complete in-
229 ventory of the destroyed, damaged and undamaged prop-
230 erty, showing in detail quantities, costs, actual cash value
231 and amount of loss claimed; and within sixty days after
232 the loss, unless such time is extended in writing by this
233 Company, the insured shall render to this Company a
234 proof of loss, signed and sworn to by the insured, stating
235 the knowledge and belief of the insured as to the follow-
236 ing: the time and origin of the loss, the interest of the
237 insured and of all others in the property, the actual cash
238 value of each item thereof and the amount of loss thereto,

239 all encumbrances thereon, all other contracts of insur-
240 ance, whether valid or not, covering any of said property,
241 any changes in the title, use, occupation, location, posses-
242 sion or exposures of said property since the issuing of this
243 policy, by whom and for what purpose any building here-
244 in described and the several parts thereof were occupied
245 at the time of loss and whether or not it then stood on
246 leased ground, and shall furnish a copy of all the descrip-
247 tions and schedules in all policies and, if required, verified
248 plans and specifications of any building, fixtures or ma-
249 chinery destroyed or damaged. The insured, as often as
250 may be reasonably required, shall exhibit to any person
251 designated by this Company all that remains of any prop-
252 erty herein described, and submit to examinations under
253 oath by any person named by this Company, and sub-
254 scribe the same; and, as often as may be reasonably re-
255 quired, shall produce for examination all books of ac-
256 count, bills, invoices and other vouchers, or certified copies
257 thereof if originals be lost, at such reasonable time and
258 place as may be designated by this Company or its rep-

259 resentative, and shall permit extracts and copies thereof
260 to be made.

261 *Appraisal.* In case the insured and this Company shall
262 fail to agree as to the actual cash value or the amount
263 of loss, then, on the written demand of either, each shall
264 select a competent and disinterested appraiser and notify
265 the other of the appraiser selected within twenty days of
266 such demand. The appraisers shall first select a competent
267 and disinterested umpire; and failing for fifteen days to
268 agree upon such umpire, then, on request of the insured
269 or this Company, such umpire shall be selected by a judge
270 of a court of record in the state in which the property
271 covered is located. The appraisers shall then appraise
272 the loss, stating separately actual cash value and loss to
273 each item; and, failing to agree, shall submit their differ-
274 erences, only, to the umpire. An award in writing, so
275 itemized, of any two when filed with this Company shall
276 determine the amount of actual cash value and loss. Each
277 appraiser shall be paid by the party selecting him and the
278 expenses of appraisal and umpire shall be paid by the
279 parties equally.

280 *Company's options.* It shall be optional with this Com-
281 pany to take all, or any part, of the property at the agreed
282 or appraised value, and also to repair, rebuild or replace
283 the property destroyed or damaged with other of like
284 kind and quality within a reasonable time, on giving no-
285 tice of its intention so to do within thirty days after the
286 receipt of the proof of loss herein required.

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

289 *When loss payable.* The amount of loss for which this
290 Company may be liable shall be payable sixty days after
291 proof of loss, as herein provided, is received by this Com-
292 pany and ascertainment of the loss is made either by
293 agreement between the insured and this Company ex-
294 pressed in writing or by the filing with this Company of
295 an award as herein provided.

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

301 *Subrogation.* This Company may require from the in-
302 sured an assignment of all right of recovery against any
303 party for loss to the extent that payment therefor is
304 made by this Company.

305 ATTACH FORM BELOW THIS LINE

306 Standard Fire Insurance Policy of the State of

307

308 Expires

309 Property

310 Assured

311 No.

312 (COMPANY)

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

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

Joseph L. Wagner

Chairman Senate Committee

R. L. Matthews

Chairman House Committee

Originated in the House of Delegates

Takes effect From passage.

Howard Meyer
Clerk of the Senate

J. A. Huff
Clerk of the House of Delegates

W. Raleigh Stewart
President of the Senate

W. E. Summers
Speaker House of Delegates

The within APPROVED this the 18TH day of MARCH, 1949.

Okey L. Patterson
Governor.



Filed in the Office of the Secretary of State of West Virginia

MAR 18 1949

D. PITT O'BRIEN,
SECRETARY OF STATE