

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949



ENROLLED

HOUSE BILL No. 175

(By Mr. Trent)



PASSED March 12 1949

In Effect April 3, 1949 Passage



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House Bill No. 175

(By MR. TRENT, by request)

[Passed March 12, 1949; in effect April 1, 1949.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article to be designated article fifteen, relative to the regulation of rates for certain casualty insurance including fidelity, surety and guaranty bonds and all other forms of motor vehicle insurance, and to rating organizations.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article to be designated article fifteen, to read as follows:

Article 15. Casualty Insurance Rates and Rating Organizations.

Section 1. *Purpose of Article.*—The purpose of this article is to promote the public welfare by regulating certain

3 insurance rates to the end that they shall not be excessive,
4 inadequate or unfairly discriminatory, and to authorize
5 and regulate co-operative action among insurers in rate
6 making and in other matters within the scope of this arti-
7 cle. Nothing in this article is intended (1) to prohibit
8 or discourage competition, or (2) to prohibit, or encour-
9 age except to the extent necessary to accomplish the afore-
10 mentioned purpose hereof, uniformity in insurance rates,
11 rating systems, rating plans or practices. This article
12 shall be liberally interpreted to carry into effect the
13 provisions of this section.

Sec. 2. *Scope of Article.*—This article applies to cas-
2 ualty insurance including fidelity, surety and guaranty
3 bonds, and to all other forms of motor vehicle insurance,
4 on risks or operations in this state, except:

5 (a) Reinsurance, other than joint reinsurance to the
6 extent stated in section twelve;

7 (b) Accident and health insurance;

8 (c) Insurance against loss of or damage to aircraft
9 or against liability, other than employers' liability, aris-

10 ing out of the ownership, maintenance or use of aircraft;

11 and

12 (d) Title insurance.

13 This article applies to all insurers, including stock and
14 mutual insurers, reciprocal and inter-insurance exchanges
15 which under any provisions of the laws of this state write
16 any of the kinds of insurance to which this article ap-
17 plies.

18 If any kind of insurance, subdivision or combination
19 thereof, or type of coverage, subject to this article, is
20 also subject to regulation by another rate regulatory act
21 of this state, an insurer to which both acts are otherwise
22 applicable shall file with the commissioner of insurance,
23 hereinafter referred to as commissioner, a designation
24 as to which rate regulatory act shall be applicable to it
25 with respect to such kind of insurance, subdivision or
26 combination thereof, or type of coverage.

Sec. 3. *Making of Rates.*—(a) All rates shall be made
2 in accordance with the following provisions:

3 1. Due consideration shall be given to past and pros-
4 pective loss experience within and outside this state, to

5 catastrophe hazards, if any, to a reasonable margin for
6 underwriting profit and contingencies, to dividends, sav-
7 ings or unabsorbed premium deposits allowed or returned
8 by insurers to their policyholders, members or subscrib-
9 ers, to past and prospective expenses both countrywide
10 and those specially applicable to this state, to such
11 factors as expense, management, individual experience,
12 underwriting judgment, degree or nature of hazard or
13 any other reasonable considerations, provided such fac-
14 tors apply to all risks under the same or substantially
15 the same circumstances or conditions, and to all other
16 relevant factors within and outside this state;

17 2. The system of expense provisions included in the
18 rates for use by any insurer or group of insurers may
19 differ from those of other insurers or groups of insurers
20 to reflect the requirements of the operating methods of
21 any such insurer or group with respect to any kind of
22 insurance, or with respect to any subdivision or com-
23 bination thereof for which subdivision or combination
24 separate expense provisions are applicable;

25 3. Risk may be grouped by classifications for the es-

26 tablishment of rates and minimum premiums. Classifi-
27 cation rates may be modified to produce rates for in-
28 dividual risks in accordance with rating plans which
29 establish standards for measuring variations in hazards
30 or expense provisions, or both. Such standards may
31 measure any differences among risks that can be dem-
32 onstrated to have a probable effect upon losses or ex-
33 penses;

34 4. Rates shall not be excessive, inadequate or unfairly
35 discriminatory.

36 (b) Except to the extent necessary to meet the pro-
37 visions of subdivision four of sub-section (a) of this sec-
38 tion, uniformity among insurers in any matter within
39 the scope of this section is neither required nor prohib-
40 ited.

Sec. 4. *Rate Filings.*—(a) Every insurer shall file with
2 the commissioner every manual of classifications, rules
3 and rates, every rating plan and every modification of
4 any of the foregoing which it proposes to use. Every
5 such filing shall state the proposed effective date there-
6 of, and shall indicate the character and extent of the

7 coverage contemplated. When a filing is not accompa-
8 nied by the information upon which the insurer supports
9 such filing, and the commissioner does not have sufficient
10 information to determine whether such filing meets the
11 requirements of this article he may require such insurer
12 to furnish the information upon which it supports such
13 filing and in such event the waiting period shall commence
14 as of the date such information is furnished. The informa-
15 tion furnished in support of a filing shall include (1) the
16 experience or judgment of the insurer or rating organiza-
17 tion making the filing, (2) its interpretation of any statis-
18 tical data it relies upon, (3) the experience of other in-
19 surers or rating organizations, or (4) any other relevant
20 factors. A filing and any supporting information shall be
21 open to public inspection after the filing becomes effec-
22 tive.

23 (b) An insurer may satisfy its obligation to make such
24 filings by becoming a member of, or a subscriber to, a
25 licensed rating organization which makes such filings,
26 and by authorizing the commissioner to accept such fil-
27 ings on its behalf: *Provided*, That nothing contained in

28 this article shall be construed as requiring any insurer
29 to become a member of or a subscriber to any rating or-
30 ganization.

31 (c) The commissioner shall review filings as soon as
32 reasonably possible after they have been made in order
33 to determine whether they meet the requirements of this
34 article.

35 (d) Subject to the exception specified in this and in
36 sub-section, (e) of this section, each filing shall be on file
37 for a waiting period of fifteen days before it become ef-
38 fective, which period may be extended by the commis-
39 sioner for one additional period not to exceed fifteen days
40 if he gives written notice within such waiting period to
41 the insurer or rating organization which made the filing
42 that he needs such additional time for the consideration
43 of such filing. Upon written application by such insurer
44 or rating organization, the commissioner may authorize
45 a filing which he has reviewed to become effective be-
46 fore the expiration of the waiting period or any extension
47 thereof. A filing shall be deemed to meet the require-
48 ments of this article unless disapproved by the commis-

49 sioner within the waiting period or any extension there-
50 of.

51 (e) Any special filing with respect to a surety or guar-
52 anty bond required by law or by court or executive order
53 or by order, rule or regulation of a public body, not cov-
54 ered by a previous filing, shall become effective when
55 filed and shall be deemed to meet the requirements of
56 this article until such time as the commissioner reviews
57 the filing and so long thereafter as the filing remains in
58 effect.

59 (f) Under such rules and regulations as he shall adopt
60 the commissioner may, by written order, suspend or
61 modify the requirement of filings as to any kind of in-
62 surance, subdivision or combination thereof, or as to
63 classes of risks, the rates for which cannot practicably
64 be filed before they are used. Such orders, rules and reg-
65 ulations shall be made known to insurers and rating or-
66 ganizations affected thereby. The commissioner may make
67 such examination as he may deem advisable to ascertain
68 whether any rates affected by such order meet the stand-

69 ards set forth in subdivision four of sub-section (a) of
70 section three.

71 (g) Upon the written application of the insured, stat-
72 ing his reasons therefor, an insurer may use, subject to
73 such rules and regulations as the commissioner may adopt,
74 a rate in excess of that provided by any filing otherwise
75 applicable on any specific risk.

76 (h) Beginning ninety days after the effective date of
77 this article no insurer shall make or issue a contract or
78 policy except in accordance with filings which are in ef-
79 fect for said insurer as provided in this article or in ac-
80 cordance with sub-sections (f) or (g) of this section.

Sec. 5. *Disapproval of Filings.*—(a) If within the wait-
2 ing period or an extension thereof as provided in sub-
3 section (d) of section four, the commissioner finds that
4 a filing does not meet the requirements of this article,
5 he shall send to the insurer or rating organization which
6 made such filing written notice of disapproval of such
7 filing specifying therein in what respects he finds such
8 filing fails to meet the requirements of this article and
9 stating that such filing shall not become effective.

10 (b) If within thirty days after a special surety or
11 guaranty filing subject to sub-section (e) of section four
12 has become effective, the commissioner finds that such
13 filing does not meet the requirements of this article, he
14 shall send to the insurer or rating organization which
15 made such filing written notice of disapproval of such
16 filing, specifying therein in what respects he finds that
17 such filing fails to meet the requirements of this article
18 and stating when, within a reasonable period thereafter,
19 such filing shall be deemed no longer effective. Said dis-
20 approval shall not affect any contract made or issued
21 prior to the expiration of the period set forth in said no-
22 tice.

23 (c) If at any time subsequent to the applicable review
24 provided for in sub-section (a) or (b) of this section,
25 the commissioner finds that a filing does not meet the
26 requirements of this article, he shall, after a hearing held
27 upon not less than ten days' written notice, specifying
28 the matters to be considered at such hearing, to every
29 insurer and rating organization which made such filing,
30 issue an order specifying in what respects he finds that

31 such filing fails to meet the requirements of this article,
32 and stating when, within a reasonable period thereafter,
33 such filing shall be deemed no longer effective. Copies
34 of said order shall be sent to every such insurer and
35 rating organization. Said order shall not affect any con-
36 tract or policy made or issued prior to the expiration of
37 the period set forth in said order.

38 (d) Any person or organization aggrieved with respect
39 to any filing which is in effect may make written appli-
40 cation to the commissioner for a hearing thereon: *Pro-*
41 *vided, however,* That the insurer or rating organization
42 that made the filing shall not be authorized to proceed
43 under this sub-section. Such application shall specify
44 the grounds to be relied upon by the applicant. If the
45 commissioner shall find that the application is made in
46 good faith, that the applicant would be so aggrieved if
47 his grounds are established, and that such grounds other-
48 wise justify holding such a hearing, he shall, within thir-
49 ty days after receipt of such application, hold a hearing
50 upon not less than ten days' written notice to the appli-

51 cant and to every insurer and rating organization which
52 made such filing.

53 If, after such hearing, the commissioner finds that the
54 filing does not meet the requirements of this article, he
55 shall issue an order specifying in what respects he finds
56 that such filing fails to meet the requirements of this arti-
57 cle, and stating when, within a reasonable period there-
58 after, such filing shall be deemed no longer effective.
59 Copies of said order shall be sent to the applicant and
60 to every such insurer and rating organization. Said order
61 shall not affect any contract or policy made or issued prior
62 to the expiration of the period set forth in said order.

63 (e) No manual of classifications, rules, rating plan or
64 any modification of any of the foregoing which estab-
65 lishes standards for measuring variations in hazards or
66 expense provisions, or both, and which has been filed
67 pursuant to the requirements of section four of this arti-
68 cle shall be disapproved if the rates thereby produced
69 meet the requirements of this article.

Sec. 6. *Alternative Filing Section.*—(a) In lieu of the
2 filing and review procedure provided in sections four and

3 five, such filings, other than special surety or guaranty
4 bond filings referred to in subsection (e) of section four,
5 may be made under this section and the rates shall become
6 effective immediately upon filing or at such future time
7 as the insurer or rating organization making them may
8 specify and shall thereafter remain in effect unless and
9 until changed by the insurer or rating organization mak-
10 ing them, or adjusted by order of the commissioner as in
11 this section provided.

12 (b) Whenever the commissioner upon his own informa-
13 tion, or upon complaint of any member of the public
14 alleged to be aggrieved thereby, shall have reason to be-
15 lieve that any of the rates filed under this section are not
16 in accordance with the provisions of this act, he shall have
17 the power and authority to investigate to the extent he
18 shall see fit the necessity for an adjournment of any or
19 all of such rates.

20 (c) After such investigation, the commissioner shall,
21 before ordering any appropriate adjustment thereof, hold
22 a hearing upon not less than ten days' written notice
23 specifying the matter to be considered at such hearing,

24 to every insurer and rating organization which files such
25 rates under inquiry, but no hearing shall be held if every
26 insurer and rating organization affected shall advise the
27 commissioner that they do not desire such hearing. If
28 after such hearing, the commissioner determines that any
29 or all of such rates are excessive, inadequate or unfairly
30 discriminatory, as between individual risks or classes of
31 risks of an insurer he shall order appropriate adjustment
32 thereof. Pending such investigation and order of the com-
33 missioner, rates shall be deemed to have been made in
34 accordance with the terms of this act. No order of adjust-
35 ment shall affect any contract or policy made or issued
36 prior to the effective date of his order unless (a) the ad-
37 justment to be effected is substantial and exceeds the cost
38 to the company of making the adjustment; and (b) the
39 order is made after the prescribed investigation and hear-
40 ing and within sixty days after the filing of rates affected.
41 If in event of a rate adjustment requiring an increased
42 rate, the policyholder does not accept such increase, can-
43 cellation shall be made on a pro rata basis. Each policy
44 issued pursuant to filing under this section which may be

45 subject to rate or premium adjustment, shall so provide
46 in language to be approved by the commissioner.

47 (d) The commissioner after such sixty days may re-
48 view any such rates in the manner and subject to the
49 conditions provided in sub-section (c) of section five.

50 (e) In determining the necessity for an adjustment of
51 rates, the commissioner shall observe the provisions of
52 section three and sub-division (e) of section five and shall
53 give consideration to the type of information which may
54 be furnished in support of a filing as set forth in sub-
55 section (a) of section four.

Sec. 7. *Rating Organizations.*—(a) A corporation, an
2 unincorporated association, a partnership or an individual,
3 whether located within or outside this state, may make
4 application to the commissioner for license as a rating
5 organization for such kinds of insurance or sub-divisions
6 thereof as are specified in its application and shall file
7 therewith (1) a copy of its constitution, its articles of
8 agreement or association or its certificate of incorporation,
9 and of its by-laws, rules and regulations governing the
10 conduct of its business, (2) a list of its members and

11 subscribers, (3) the name and address of a resident of
12 this state upon whom notices or orders of the commis-
13 sioner or process affecting such rating organization may
14 be served and (4) a statement of its qualifications as a
15 rating organization. If the commissioner finds that the
16 applicant is competent, trustworthy and otherwise
17 qualified to act as a rating organization and that its con-
18 stitution, articles of agreement or association or certificate
19 of incorporation, and its by-laws, rules and regulations
20 governing the conduct of its business conform to the re-
21 quirements of law, he shall issue a license specifying the
22 kinds of insurance or subdivision thereof for which the
23 applicant is authorized to act as a rating organization.
24 Every such application shall be granted or denied in
25 whole or in part by the commissioner within sixty days
26 of the date of its filing with him. Licenses issued pur-
27 suant to this section shall remain in effect for three years
28 unless sooner suspended or revoked by the commissioner.
29 The fee for said license shall be twenty-five dollars. Said
30 license fee shall be in lieu of all other fees, licenses or
31 taxes to which said rating organization may otherwise be

32 subject. Licenses issued pursuant to this section may be
33 suspended or revoked by the commissioner, after hearing
34 upon notice, in the event the rating organization ceases
35 to meet the requirements of this sub-section. Every rating
36 organization shall notify the commissioner promptly of
37 every change in (1) its constitution, its articles of agree-
38 ment or association or its certificate of incorporation, and
39 its by-laws, rules and regulations governing the conduct
40 of its business, (2) its list of members and subscribers and
41 (3) the name and address of the resident of this state
42 designated by it upon whom notices or orders of the com-
43 missioner or process affecting such rating organization
44 may be served.

45 (b) Subject to rules and regulations which have been
46 approved by the commissioner as reasonable, each rating
47 organization shall permit any insurer, not a member, to
48 be a subscriber to its rating services for any kind of in-
49 surance or subdivision thereof for which it is authorized
50 to act as rating organization. Notice of proposed changes
51 in such rules and regulations shall be given to subscribers.
52 Each rating organization shall furnish its rating services

53 without discrimination to its members and subscribers.
54 The reasonableness of any rule or regulation in its ap-
55 plication to subscribers, or the refusal of any rating or-
56 ganization to admit an insurer as a subscriber, shall, at
57 the request of any subscriber or any such insurer, be
58 reviewed by the commissioner at a hearing held upon at
59 least ten days' written notice to such rating organization
60 and to such subscriber or insurer. If the commissioner
61 finds that such rule or regulation is unreasonable in its
62 application to subscribers, he shall order that such rule
63 or regulation shall not be applicable to subscribers. If the
64 rating organization fails to grant or reject an insurer's
65 application for subscribership within thirty days after it
66 was made, the insurer may request a review by the com-
67 missioner as if the application had been rejected. If the
68 commissioner finds that the insurer has been refused ad-
69 mittance to the rating organization as a subscriber with-
70 out justification, he shall order the rating organization to
71 admit the insurer as a subscriber. If he finds that the ac-
72 tion of the rating organization was justified, he shall make
73 an order affirming its action.

74 (c) No rating organization shall adopt any rules the
75 effect of which would be to prohibit or regulate the pay-
76 ment of dividends, savings or unabsorbed premium de-
77 posits allowed or returned by insurers to their policy-
78 holders, members or subscribers.

79 (d) Cooperation among rating organizations or among
80 rating organizations and insurers in rate making or in
81 other matters within the scope of this article is hereby
82 authorized, provided the filings resulting from such co-
83 operation are subject to all the provisions of this article
84 which are applicable to filings generally. The commis-
85 sioner may review such cooperative activities and prac-
86 tices and if, after a hearing, he finds that any such ac-
87 tivity or practice is unfair or unreasonable or otherwise
88 inconsistent with the provisions of this article, he may
89 issue a written order specifying in what respect such ac-
90 tivity or practice is unfair or unreasonable or otherwise
91 inconsistent with the provisions of this article, and re-
92 quiring the discontinuance of such activity or practice.

Sec. 8. *Deviations.*—Every member of or subscriber to
2 a rating organization shall adhere to the filings made on

3 its behalf by such organization except that any such in-
4 surer may make written application to the commissioner
5 for permission to file a uniform percentage decrease or
6 increase to be applied to the premiums produced by the
7 rating system so filed for a kind of insurance, or for a
8 class of insurance which is found by the commissioner to
9 be a proper rating unit for the application of such uniform
10 percentage decrease or increase, or for a sub-division of a
11 kind of insurance (1) comprised of a group of manual
12 classifications which is treated as a separate unit for rate
13 making purposes, or (2) for which separate expense pro-
14 visions are included in the filings of the rating organiza-
15 tion. Such application shall specify the basis for the modi-
16 fication and shall be accompanied by the data upon which
17 the applicant relies. A copy of the application and data
18 shall be sent simultaneously to such rating organization.
19 The commissioner shall set a time and place for a hearing
20 at which the insurer and such rating organization may be
21 heard and shall give them not less than ten days' written
22 notice thereof. In the event the commissioner is advised
23 by the rating organization that it does not desire a hearing

24 he may, upon the consent of the applicant, waive such
25 hearing. The commissioner shall issue an order permit-
26 ting the modification for such insurer to be filed if he finds
27 it to be justified and it shall thereupon become effective.
28 He shall issue an order denying such application if he
29 finds that the modification is not justified or that the re-
30 sulting premiums would be excessive, inadequate or un-
31 fairly discriminatory. Each deviation permitted to be filed
32 shall be effective for a period of one year from the date of
33 such permission unless terminated sooner with the ap-
34 proval of the commissioner.

Sec. 9. *Appeal by Minority.*—Any member of or sub-
2 scriber to a rating organization may appeal to the com-
3 missioner from the action or decision of such rating or-
4 ganization in approving or rejecting any proposed change
5 in or addition to the filings of such rating organization
6 and the commissioner shall, after a hearing held upon not
7 less than ten days' written notice to the appellant and to
8 such rating organization, issue an order approving the
9 action or decision of such rating organization or directing
10 it to give further consideration to such proposal, or, if

11 such appeal is from the action or decision of the rating
12 organization in rejecting a proposed addition to its filings,
13 he may, in the event he finds that such action or decision
14 was unreasonable, issue an order directing the rating or-
15 ganization to make an addition to its filings, on behalf of
16 its members and subscribers, in a manner consistent with
17 his findings, within a reasonable time after the issuance
18 of such order.

19 If such appeal is based upon the failure of the rating
20 organization to make a filing on behalf of such member
21 or subscriber which is based on a system of expense pro-
22 visions which differs in accordance with the right granted
23 in sub-division two of subsection (a) of section three, from
24 the system of expense provisions included in a filing made
25 by the rating organization, the commissioner shall, if he
26 grants the appeal, order the rating organization to, make
27 the requested filing for use by the appellant. In deciding
28 such appeal the commissioner shall apply the standards
29 set forth in section three.

Sec. 10. *Information to be Furnished Insureds; Hear-*
2 *ings and Appeals of Insureds.*—Every rating organization

3 and every insurer which makes its own rates shall, within
4 a reasonable time after receiving written request therefor
5 and upon payment of such reasonable charge as it may
6 make, furnish to any insured affected by a rate made by
7 it, or to the authorized representative of such insured, all
8 pertinent information as to such rate.

9 Every rating organization and every insurer which
10 makes its own rates shall provide within this state rea-
11 sonable means whereby any person aggrieved by the ap-
12 plication of its rating system may be heard, in person or
13 by his authorized representative, on his written request
14 to review the manner in which such rating system has
15 been applied in connection with the insurance afforded
16 him. If the rating organization or insurer fails to grant
17 or reject such request within thirty days after it is made,
18 the applicant may proceed in the same manner as if his
19 application had been rejected. Any party affected by the
20 action of such rating organization or such insurer on such
21 request may, within thirty days after written notice of
22 such action, appeal to the commissioner, who, after a hear-
23 ing held upon not less than ten days' written notice to the

24 appellant and to such rating organization or insurer, may
25 affirm or reverse such action.

Sec. 11. *Advisory Organizations.*—(a) Every group, as-
2 sociation or other organization of insurers, whether located
3 within or outside this state, which assists insurers which
4 make their own filings or rating organizations in rate
5 making, by the collection and furnishing of loss or expense
6 statistics, or by the submission of recommendations, but
7 which does not make filings under this article, shall be
8 known as an advisory organization.

9 (b) Every advisory organization shall file with the com-
10 missioner (1) a copy of its constitution, its articles of
11 agreement or association or its certificate of incorporation
12 and of its by-laws, rules and regulations governing its ac-
13 tivities, (2) a list of its members, (3) the name and
14 address of a resident of this state upon whom notices or
15 orders of the commissioner or process issued at his direc-
16 tion may be served, and (4) an agreement that the com-
17 missioner may examine such advisory organization in ac-
18 cordance with the provisions of section twelve of this
19 article.

20 (c) If, after a hearing, the commissioner finds that the
21 furnishing of such information or assistance involves any
22 act or practice which is unfair or unreasonable or other-
23 wise inconsistent with the provisions of this article, he
24 may issue a written order specifying in what respects such
25 act or practice is unfair or unreasonable or otherwise in-
26 consistent with the provisions of this article, and requir-
27 ing the discontinuance of such act or practice.

28 (d) No insurer which makes its own filings nor any
29 rating organization shall support its filings by statistics
30 or adopt rate making recommendations, furnished to it
31 by an advisory organization which has not complied with
32 this section or with an order of the commissioner involv-
33 ing such statistics or recommendations issued under sub-
34 section (c) of this section. If the commissioner finds such
35 insurer or rating organization to be in violation of this
36 sub-section he may issue an order requiring the discon-
37 tinuance of such violation.

Sec. 12. *Joint Underwriting or Joint Reinsurance.*—

2 (a) Every group, association or other organization of in-
3 surers which engages in joint underwriting or joint re-

4 insurance, shall be subject to regulation with respect
5 thereto as herein provided, subject however, with respect
6 to joint underwriting, to all other provisions of this article
7 and with respect to joint reinsurance, to sections thirteen
8 and seventeen to twenty-one of this article.

9 (b) If, after a hearing, the commissioner finds that any
10 activity or practice of any such group, association or other
11 organization is unfair or unreasonable or otherwise in-
12 consistent with the provisions of this article, he may issue
13 a written order specifying in what respect such activity
14 or practice is unfair or unreasonable or otherwise incon-
15 sistent with the provisions of this article, and requiring
16 the discontinuance of such activity or practice.

Sec. 13. *Examinations.*—The commissioner shall, at least
2 once in five years, make or cause to be made an examina-
3 tion of each rating organization licensed in this state as
4 provided in section seven and he may, as often as he
5 may deem it expedient, make or cause to be made an
6 examination of each advisory organization referred to in
7 section eleven and of each group, association or other
8 organization referred to in section twelve. The reasonable

9 costs of any such examination shall be paid by the rating
10 organization, advisory organization, or group, association
11 or other organization examined upon presentation to it of
12 a detailed account of such costs. The officer, manager,
13 agents and employees of such rating organization, ad-
14 visory organization, or group, association or other organi-
15 zation may be examined at any time under oath and shall
16 exhibit all books, records, accounts, documents, or agree-
17 ments governing its method of operation. The commis-
18 sioner shall furnish two copies of the examination report
19 to the organization, group or association examined and
20 shall notify such organization, group or association that
21 it may, within twenty days thereafter, request a hearing
22 on said report or on any facts or recommendations therein.
23 Before filing such report for public inspection, the com-
24 missioner shall grant a hearing to the organization, group
25 or association examined. The report of any such examina-
26 tion, when filed for public inspection, shall be admissible
27 in evidence in any action or proceeding brought by the
28 commissioner against the organization, group or associa-
29 tion examined, or its officers or agents, and shall be prima

30 facie evidence of the facts stated therein. The commis-
31 sioner may withhold the report of any such examination
32 from public inspection for such time as he may deem
33 proper. In lieu of any such examination the commissioner
34 may accept the report of an examination made by the in-
35 surance supervisory official of another state, pursuant to
36 the laws of such state.

Sec. 14. *Rate Administration.*—(a) The commissioner
2 shall promulgate reasonable rules and statistical plans,
3 reasonably adapted to each of the rating systems on file
4 with him, which may be modified from time to time and
5 which shall be used thereafter by each insurer in the
6 recording and reporting of its loss and countrywide ex-
7 pense, in order that the experience of all insurers may
8 be made available at least annually in such form and de-
9 tail as may be necessary to aid him in determining
10 whether rating systems comply with the standards set
11 forth in section three. Such rules and plans may also
12 provide for the recording and reporting of expense expe-
13 rience items which are specially applicable to this state
14 and which are not susceptible of determination by a pro-

15 rating of countrywide expense experience. In promulgat-
16 ing such rules and plans, the commissioner shall give due
17 consideration to the rating system on file with him and,
18 in order that such rules and plans may be as uniform as
19 is practicable among the several states, to the rules and
20 to the form of the plans used for such rating systems in
21 other states. Each insurer shall record and report its loss
22 experience on a classification basis consistent with the
23 rating system filed by it. Any insurer may report such
24 experience direct to the commissioner or may satisfy its
25 obligation to report such experience by becoming a mem-
26 ber of, or a subscriber to, a licensed rating or qualified
27 advisory organization which gathers, compiles and re-
28 ports to the commissioner the experience required by this
29 section and by authorizing the commissioner to accept
30 such reports on its behalf. No insurer shall be required
31 to report such experience to any licensed rating or quali-
32 fied advisory organization of which it is not a member or
33 subscriber. The experience of individual insurers thus re-
34 ported to the commissioner shall not be revealed by him,
35 except by court order, but the commissioner shall make a

36 compilation of all such experience to the extent he may
37 deem practicable and he shall, to the extent he may deem
38 practicable, make a consolidation of all compilations filed
39 with him and those made by him. All such compilations
40 and consolidations shall be available to licensed insurers
41 and licensed rating and qualified advisory organizations
42 and shall also be open to public inspection, subject to
43 reasonable rules promulgated by the commissioner.

44 (b) Reasonable rules and plans may be promulgated by
45 the commissioner for the interchange of data necessary
46 for the application of rating plans.

47 (c) In order to further uniform administration of rate
48 regulatory laws, the commissioner and every insurer and
49 rating organization may exchange information and expe-
50 rience data with insurance supervisory officials, insurers
51 and rating organizations in other states and may consult
52 with them with respect to rate making and the application
53 or rating systems.

54 (d) The commissioner may make reasonable rules and
55 regulations necessary to effect the purposes of this article.

Sec. 15. *False or Misleading Information.*—No person

2 or organization shall wilfully withhold information from,
3 or knowingly give false or misleading information to, the
4 commissioner, any statistical agency designated by the
5 commissioner, any rating organization, or any insurer,
6 which will affect the rates or premiums chargeable under
7 this article. A violation of this section shall subject the
8 one guilty of such violation to the penalties provided in
9 section eighteen of this article.

Sec. 16. *Assigned Risks.*—Agreements may be made
2 among insurers with respect to the equitable apportion-
3 ment among them of insurance which may be afforded
4 applicants who are in good faith entitled to but who are
5 unable to procure such insurance through ordinary meth-
6 ods and such insurers may agree among themselves on
7 the use of reasonable rate modifications for such insur-
8 ance, such agreements and rate modifications to be subject
9 to the approval of the commissioner.

Sec. 17. *Rebates Prohibited.*—No broker, agent or
2 solicitor shall knowingly charge, demand or receive a
3 premium for any policy of insurance except in accord-
4 ance with the provisions of this article. No insurer or em-

5 ployee thereof, and no broker, agent or solicitor shall pay,
6 or give, or offer to pay, allow, or give, directly or indirectly
7 as an inducement to insurance, or after insurance has
8 been effected, any rebate, discount abatement, credit or
9 reduction of the premium named in a policy of insurance,
10 or any special favor or advantage in the dividends or other
11 benefits to accrue thereon, or any valuable consideration
12 or inducement whatever, not specified in the policy of in-
13 surance, except to the extent provided for in an applicable
14 filing. No insured named in a policy of insurance, nor
15 any employee of such insured shall knowingly receive or
16 accept, directly or indirectly, any such rebate, discount,
17 abatement, credit or reduction of premium, or any such
18 special favor or advantage or valuable consideration or
19 inducement.

20 Nothing in this section shall be construed as prohibiting
21 the payment of commissions or other compensation to duly
22 licensed agents, brokers and solicitors, nor as prohibiting
23 any insurer from allowing or returning to its participating
24 policyholders, members or subscribers, dividends, savings
25 or unabsorbed premium deposits. As used in this section

26 the word "insurance" includes suretyship and the word
27 "policy" includes bond.

28 Sections eighteen, nineteen and twenty, inclusive, of
29 article two of this chapter shall not apply to any kind of
30 insurance subject to the provisions of this article.

Sec. 18. *Penalties.*—Any person or organization violat-
2 ing any provision of this article shall, upon conviction,
3 be subject to a penalty of not more than fifty dollars for
4 each such violation, but if such violation is found to be
5 willful, the penalty may be not more than five hundred
6 dollars for each such violation. Such penalties may be in
7 addition to any other penalty provided by law.

8 The commissioner may suspend the license of any
9 rating organization or insurer which fails to comply
10 with an order of the commissioner within the time lim-
11 ited by such order, or any extension thereof which the
12 commissioner may grant. The commissioner shall not
13 suspend the license of any rating organization or insurer
14 for failure to comply with an order until the time pre-
15 scribed for an appeal therefrom has expired or if an ap-
16 peal has been taken, until such order has been affirmed.

17 The commissioner may determine when a suspension of
18 license shall become effective and it shall remain in ef-
19 fect for the period fixed by him, unless he modifies or
20 rescinds such suspension, or until the order upon which
21 such suspension is based is modified, rescinded or reversed.

22 No license shall be suspended or revoked except upon
23 a written order of the commissioner, stating his findings,
24 made after a hearing held upon not less than ten days'
25 written notice to such person or organization specifying
26 the alleged violation.

Sec. 19. *Hearing Procedure and Judicial Review.*—(a)

2 Any insurer or rating organization aggrieved by any
3 order or decision of the commissioner made without a
4 hearing may, within thirty days after notice of the order
5 to the insurer or organization, make written request to
6 the commissioner for a hearing thereon. The commis-
7 sioner shall hear such party or parties within twenty
8 days after receipt of such request and shall give not less
9 than ten days written notice of the time and place of
10 the hearing. Within fifteen days after such hearing the
11 commissioner shall affirm, reverse or modify his previous

12 action, specifying his reasons therefor. Pending such
13 hearing and decision thereon the commissioner may sus-
14 pend or postpone the effective date of his previous ac-
15 tion.

16 (b) Nothing contained in this article shall require the
17 observance at any hearing of formal rules of pleading or
18 evidence.

19 (c) In the event that any party in interest is dissatis-
20 fied with any decision or order of the commissioner he
21 or it may, within thirty days after the entry thereof,
22 file a petition to the circuit court of Kanawha county,
23 or to the judge thereof in vacation, for the review of
24 such order. Before presenting his or its petition to the
25 court or judge, the petitioner shall mail a copy thereof
26 to the insurance commissioner. Upon the receipt of such
27 copy, the insurance commissioner shall forthwith trans-
28 mit to the clerk of such court the record of the proceed-
29 ings before him. The court or judge shall fix a time for
30 the review of said proceedings at his earliest convenience.
31 Notice in writing of the time and place of such hearing
32 shall be given to the insurance commissioner at least ten

33 days before the date set therefor. The court or judge
34 shall, without a jury, hear and determine the case upon
35 the record of the proceedings before the insurance com-
36 missioner. The court or judge may enter an order re-
37 vising or reversing the decision of the insurance com-
38 missioner, if it appears that the decision is clearly wrong,
39 or may affirm such decision. The judgment of the circuit
40 court or judge may be reviewed upon appeal in the su-
41 preme court of appeals. Pending such review the order
42 of the commissioner shall be in full force and effect until
43 final determination, unless the court, or the judge thereof
44 sitting in vacation, before whom such review is pending,
45 shall enter an order staying the effect of the order or
46 decision of the commissioner until final determination
47 by the court. The court may, in disposing of the issue
48 before it, modify, affirm or reverse the decision or order
49 of the commissioner in whole or in part.

Sec. 20. *Laws Repealed.*—All other laws or parts of
2 laws inconsistent with the provisions of this article are
3 hereby repealed.

Sec. 21. *Constitutionality.*—If any section, sub-section,

2 subdivision, paragraph, sentence or clause of this article
3 is held invalid or unconstitutional, such decision shall not
4 affect the remaining portions of this article.

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

Forest L. Mear
Chairman Senate Committee

Brancheur
Chairman House Committee

Originated in the House of Delegates

Takes effect April 1, 1949 passage.

Howard Kyles
Clerk of the Senate

J. Ashp
Clerk of the House of Delegates

Franklin D. Hunter
President of the Senate

W. C. Pennington
Speaker House of Delegates

The within approved this the 18th
day of March, 1949.

Chas. L. Patton
Governor.



Filed in the Office of the Secretary of State
of West Virginia MAR 18 1949
D. PITT O'BRIEN,
SECRETARY OF STATE