WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1955

ENROLLED

HOUSE BILL No. 62

(By Mr.)

PASSED 1955

In Effect 90 Days from Passage

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

D. PITT O'BRIEN
SECRETARY OF STATE
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 sixteen, to define and render unlawful unfair methods of competition and unfair and deceptive acts and practices in the business of insurance.

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, designated article sixteen, to read as follows:
Article 16. Unfair Methods of Competition and Unfair and 

Section 1. Declaration of Purposes.—The purpose of this act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the act of Congress of March ninth, one thousand nine hundred forty-five (Public Law fifteen, seventy-ninth Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

Sec. 2. Definitions.—When used in this act:

(a) "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society and any other legal entity engaged in the business of insurance, including agents, brokers, solicitors, and adjusters.

(b) "Commissioner" shall mean the insurance commissioner of West Virginia.

Sec. 3. Unfair Methods of Competition or Unfair and
Deceptive Acts or Practices Prohibited.—No person shall engage in this state in any trade practice which is defined in this act as, or determined pursuant to this act to be, an unfair method of competition or unfair or deceptive act or practice in the business of insurance.

Sec. 4. Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined.—The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.

(a) Misrepresentations and false advertising of policy contracts.—Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system
upon which any life insurer operates, or using any name
or title of any policy or class of policies misrepresenting
the true nature thereof, or making any misrepresentation
to any policyholder insured in any company for the pur-
pose of inducing or tending to induce such policyholder
to lapse, forfeit, or surrender his insurance.

(b) False Information and Advertising Generally.—
Making, publishing, disseminating, circulating or placing
before the public or causing, directly, to be made, pub-
lished, disseminated, circulated or placed before the public.
in a newspaper, magazine or other publication, or in the
form of a notice, circular, pamphlet, letter or poster, or
over any radio station, or in any other way, an adver-
tisement, announcement or statement containing any
assertion, representation or statement with respect to the
business of insurance or with respect to any person in
the conduct of his insurance business, which is untrue,
deceptive or misleading.

(c) Defamation.—Making, publishing, disseminating or
circulating, directly or indirectly, or aiding, abetting or
e ncouraging the making, publishing, disseminating or
circulating of any oral or written statement or any pamphlet, circular, article or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer and which is calculated to injure any person engaged in the business of insurance.

(d) Boycott, Coercion and Intimidation.—Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(e) False Financial Statements.—Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or
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59 into any of its affairs, or any public official to whom such
60 insurer is required by law to report, or who has authority
61 by law to examine into its condition or into any of its
62 affairs or, with like intent, wilfully omitting to make a
63 true entry of any material fact pertaining to the business
64 of such insurer in any book, report or statement of such
65 insurer.

66 (f) Stock Operations and Advisory Board Contracts.—
67 Issuing or delivering or permitting agents, officers, or em-
68 ployees to issue or deliver agency company stock or other
69 capital stock, or benefit certificates or shares in any com-
70 mon-law corporation, or securities or any special or advi-
71 sory board contracts or other contracts of any kind prom-
72 ising returns and profits as an inducement to insurance.

73 (g) Unfair Discrimination.—The commissioner of any
74 one or more of the acts prohibited by sections eleven-a,
75 eighteen, nineteen, twenty-two, and thirty-five of article
76 two of this chapter.

Sec. 5. Power of Commissioner.—The commissioner
2 shall have power to examine and investigate into the
3 affairs of every person engaged in the business of insurance
in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section three of this act.

Sec. 6. Hearings, Witnesses, Appearances, Production of Books, and Service of Process.—(a) Whenever the commissioner shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in section four, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and have served upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service thereof.

(b) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good
cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

(c) Nothing contained in this act shall require the observance of any such hearing of formal rules of pleading or evidence.

(d) The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence or other documents which he deems relevant to the inquiry. At the expense of and at the written request reasonably made by a person affected by the hearing, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent stenographic reporter, and if transcribed, such record shall be made a part of the commissioner's record of the hearing. A copy of such record shall be furnished any other party upon the written request and at the expense of such party. If no stenographic record is made and if a judicial review is
sought, the commissioner shall prepare a statement of the
evidence and proceeding for use on review. In case a per-
son refuses to obey any subpoena issued hereunder or to
testify with respect to any matter concerning which he
may be lawfully interrogated, the commissioner or his
representative may invoke the aid of any circuit court in
order that the testimony or evidence be produced. Upon
proper showing, such court shall issue a subpoena or
order requiring such person to appear before the com-
missioner or his representative and produce all evidence
and give all testimony touching the matter in question.
A person failing to obey such order may be punished by
such court as for contempt.
(e) Statements of charges, notices, orders and other
processes of the commissioner under this act may be
served by anyone duly authorized by the commissioner,
either in the manner provided by law for service of
process in civil actions or by registering and mailing a
copy thereof to the person affected by such statement,
notice, order or other process at his or its residence or
principal office or place of business. The verified return
by the person so serving such statement, notice, order or other process, setting forth the manner of such service, shall be proof of the same and the return post card receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

Sec. 7. Cease and Desist Orders and Modification Thereof.—(a) If, after such hearing, the commissioner shall determine that the method of competition or the act or practice in question is defined in section four and that the person complained of has engaged in such method of competition, act or practice in violation of this act, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice.

(b) Until the expiration of the time allowed under section eight (a) of this act for filing a petition for review by appeal if no such petition has been duly filed within such time or, if a petition for review has been filed within
such time, then until the transcript of the record in the proceeding has been filed in the circuit court of Kanawha county, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(c) After the expiration of the time allowed for filing such a petition for review, if no such petition has been duly filed within such time, the commissioner may, at any time after notice given pursuant to the requirements of section six (e) and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section whenever, in his opinion, conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

Sec. 8. Judicial Review of Cease and Desist Orders.—

(a) Any order or decision of the commissioner under this section shall be subject to review as provided in section thirteen, article two of this chapter. The findings of fact of the commissioner, and any modification thereof as pro-
vided for in subsection (b) of this section, if supported by the preponderance of the evidence, shall be conclusive.

(b) To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact, or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings, which, if supported by the preponderance of the evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.
(c) A cease and desist order issued by the commissioner under section seven shall become final.

(1) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside his order to the extent provided in section seven (b); or

(2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(d) No order of the commissioner under this act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

Sec. 9. Procedure as to Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Which Are Not Defined.—(a) Whenever the commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in section four, that such
method of competition is unfair or that such act or prac-
tice is unfair or deceptive and that a proceeding by him
in respect thereto would be to the interest of the public,
he may issue and serve upon such person a statement of
the charges in that respect and a notice of a hearing there-
on to be held at a time and place fixed in the notice, which
shall not be less than ten days after the date of the service
thereof. Each such hearing shall be conducted in the same
manner as the hearings provided for in section six. The
commissioner shall, after such hearing, make a report in
writing in which he shall state his findings as to the facts,
and he shall serve a copy thereof upon such person.
(b) If such report charges a violation of this act
and if such method of competition, act or practice has
not been discontinued, the commissioner may, through
the attorney general of this state, at any time after
ten days after the service of such report, cause a
petition to be filed in the circuit court of Kanawha
county or in the circuit court of this state within
the district wherein the person resides or has his prin-
cipal place of business, to enjoin and restrain such per-
son from engaging in such method, act or practice.

The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

(c) A transcript of the proceedings before the commissioner including all evidence taken and the report and findings shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such
modified or new findings with the return of such additional evidence.

(d) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public and that the findings of the commissioner are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

Sec. 10. Judicial Review by Intervenor.—If the report of the commissioner does not charge a violation of this act, then any intervenor in the proceedings may, within thirty days after the service of such report, cause a petition to be filed in the circuit court of Kanawha county for a review of such report. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such
12 report of the commissioner, constitutes a violation of this
13 act.

Sec. 11. Penalty.—Any person who violates a cease and
2 desist order of the commissioner under section seven of
3 this article, after it has become final and while such order
4 is in effect, shall forfeit and pay to the state of West Vir-
5 ginia a sum not to exceed five thousand dollars for a wil-
6 ful violation thereof; or a sum not to exceed two hundred
7 fifty dollars when such violation is not wilful; which may
8 be recovered in a civil action. Nothing herein shall be
9 construed as limiting the authority of any court to en-
10 force its orders, by contempt proceedings or otherwise.

Sec. 12. Provisions of Act Additional to Existing Law.—
2 The powers vested in the commissioner by this act shall
3 be additional to any other powers to enforce any penalties,
4 fines or forfeitures authorized by law with respect to the
5 methods, acts and practices hereby declared to be unfair
6 or deceptive.

Sec. 13. Immunity From Prosecution.—If any person
2 shall ask to be excused from attending and testifying or
3 from producing any books, papers, records, correspond-
ence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must none the less comply with such direction but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding: Provided, however, That no such individual so testifying shall be exempt from prosecution or punishment for any perjury or false swearing committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury or false swearing, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the insur-
ance law of this state. Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

Sec. 14. Trade Practice Conferences.—(a) Trade practice conferences for the purpose of dealing with such trade practices as are within the purview of this article and not defined in section four of this article, or for the purpose of establishing supplementary regulations and rules relating to trade practices defined in section four, may be authorized by the commissioner upon his own motion, or upon written application therefor by any insurer or person as defined in this article to whom rulings arising therefrom may be directly applicable, whenever such a
conference may appear to the commissioner to be in the
interest of the public. The commissioner shall give rea-
sonable notice to such persons as he shall deem directly
affected, or to their representatives, of the time and place
of any such conference. Such notice shall set forth briefly
the subject matter for consideration or drafts of trade
practice rules proposed by the commissioner or persons
affected. Each such conference shall be presided over by
the commissioner or a member of his staff designated by
him. Any such trade practice conference may submit to
the commissioner its recommendations as to rules, reg-
ulations or standards defining certain methods of compe-
tition, acts or practices as being fair or unfair, deceptive
or not deceptive, within the meaning of this section. The
scope of such trade conference shall be limited to the
phase of the insurance business directly represented by
those persons or insurers notified by the commissioner or
attending such conference upon notice from the commis-
sioner. The commissioner shall give due consideration to
the recommendations, or objections, of any such trade
practice conference which has acted under the authority
of this section. If he shall find that a proposed rule is in
the public interest and does not, in his opinion, sanction,
aid or abet a practice contrary to law, he may promul-
gate a rule, regulation or standard, enforceable under the
provisions of this article, applicable thereto, until modi-
fied or rescinded as herein provided. Before any such rule,
regulation or standard shall be promulgated under the
provisions of this section, the commissioner shall advise
all persons or insurers as defined in this article who would
be directly affected thereby and shall give thirty days'
notice in writing to such persons or insurers to file their
objections, if any. Trade practice rules, regulations or
standards promulgated under this section may be amend-
ed or rescinded by the commissioner upon his own motion,
or upon motion of any directly affected person or insurer,
after the commissioner shall have given reasonable notice
to the persons or insurers directly affected thereby, and
after there has been a hearing, if requested by such af-
fected persons or insurers, concerning such amendment
or recession: Provided, That such request is made in writ-
ing within thirty days after notice is given. Any order
or decision of the commissioner under this section shall be subject to review as provided in section thirteen, article two of this chapter.

(b) The powers vested in the commissioner by this section shall be in addition to any other powers authorized by law and shall not be construed as limiting the authority vested in the commissioner to promulgate rules, regulations or standards generally, and shall not limit his right to publish formal or informal opinions as to acts or practices being legal or illegal, fair or unfair, deceptive or not deceptive, within the meaning of this article.

Sec. 15. Separability Provision.—If any provision of this act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 14th day of March, 1955.

Governor

Filed in the Office of the Secretary of State of West Virginia MAR 15 1955

D. Pitt O'Brien
SECRETARY OF STATE