

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1957

ENROLLED

SENATE BILL NO. 335

(By Mr. Murphree)

PASSED March 9 1957

In Effect 90 days from Passage

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Senate Bill No. 335
(By MR. NUCKOLS)

[Passed March 9, 1957; in effect ninety days from passage.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve, relating to the purchase, control and supervision of insurance on state properties, activities and responsibilities, creating a state board of insurance, and prescribing penalties for the violation thereof.

Be it enacted by the Legislature of West Virginia:

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

Article 12. State Insurance.

Section 1. *Intent and Objects*.—Recognition is given to
2 the fact that the state of West Virginia owns extensive
3 properties of varied types and descriptions and represent-
4 ing the investment of vast sums of money; that the state
5 and its officials, agents and employees engage in many
6 governmental activities and services and incur and un-
7 dertake numerous governmental responsibilities and ob-
8 ligations; that such properties are subject to losses, dam-
9 age, destruction, risks and hazards and such activities and
10 responsibilities are subject to liabilities which can and
11 should be covered by a sound and adequate insurance
12 program; and that good business and insurance practices
13 and principles necessitate the centralization of responsi-
14 bility for the purchase, control and supervision of insur-
15 ance coverage on all state properties, activities and re-
16 sponsibilities and the cooperation and coordination of all
17 state officials, departments and employees in the develop-
18 ment and success of such a centralized state insurance
19 program. Wherefore, in order to accomplish these de-
20 sired ends and objectives, the provisions of this article

21 are hereby enacted into law in response to manifest needs
22 and requirements therefor and in the interest of the es-
23 tablishment and development of an adequate, econom-
24 ical and sound state insurance and bonding service on all
25 state property, activities and responsibilities.

Sec. 2. *Definitions.*—As used in this article, unless the
2 context otherwise clearly requires:

3 (a) “Board” means the “state board of insurance of West
4 Virginia.”

5 (b) “Company” means and includes corporations, as-
6 sociations, partnerships and individuals.

7 (c) “Insurance” means all forms of insurance and
8 bonding services available for protection and indemnifi-
9 cation of the state and its officials, employees, properties,
10 activities and responsibilities against loss or damage or
11 liability, including fire, marine, casualty, and surety in-
12 surance.

13 (d) “Insurance company” means all insurers or insur-
14 ance carriers, including but not limited to stock insurance
15 companies, mutual insurance companies, reciprocal and
16 inter-insurance exchanges, and all other types of insur-

17 ers and insurance carriers, including life, accident, health,
18 fidelity, indemnity, casualty, hospitalization and other
19 types and kinds of insurance companies, organizations
20 and associations, but excepting and excluding workmen's
21 compensation coverage.

22 (e) "State property activities" and "state responsibili-
23 ties" shall mean and include all operations, boards, com-
24 missions, works, projects and functions of the state, its
25 properties, officials, agents and employees which, within
26 the scope and in the course of governmental employment,
27 may be subject to liability, loss, damage, risks and haz-
28 ards recognized to be and normally included within in-
29 surance and bond coverages.

30 (f) "State property" means all property belonging to
31 the state of West Virginia and any boards or commissions
32 thereof wherever situate and which is the subject of risk
33 or reasonably considered to be subject to loss or damage
34 or liability by any single occurrence of any event insured
35 against.

Sec. 3. *Creation, Composition, Qualifications, and Com-*
2 *pensation of Board.*—(a) There is hereby created the

3 "state board of insurance of West Virginia" which shall
4 be composed of three members appointed by the governor
5 with the advice and consent of the senate. Each of the
6 members shall be a resident of West Virginia possessed
7 of not less than five years experience in the business of
8 insurance and no more than two of such members shall
9 belong to any one political party. The three original
10 members of such board shall be appointed for terms of
11 one, two and three years, respectively, and each sub-
12 sequent appointment shall be for a term of four years.
13 In the event a vacancy occurs it shall be filled by ap-
14 pointment of the unexpired term. No member of the
15 board may be removed from office by the governor ex-
16 cept for official misconduct, incompetency, neglect of
17 duty, or gross immorality.

18 (b) The insurance commissioner of West Virginia
19 shall serve as secretary of the board without vote and
20 shall make available to the board the information, facili-
21 ties and services of the office of the state insurance com-
22 missioner.

23 (c) Each member of the board shall receive the sum of

24 twenty-five dollars per day for each day's services actu-
25 ally performed for such board as well as all necessary
26 expenses incurred in the performance of their duties, not
27 exceeding one hundred days in any one calendar year.
28 The auditor shall pay such compensation and expenses
29 upon requisition certified by the chairman from appro-
30 priations provided for such purposes.

Sec. 4. Organization, Meetings and Reports of Board.—

2 The board shall select one of its members as chairman
3 and shall meet in the office of the insurance commissioner
4 upon call of the chairman. The board shall keep records
5 of all of its proceedings which shall be public and open
6 to inspection, shall adopt a seal and shall exercise and
7 perform the duties prescribed by this article.

8 The board shall report in writing to the governor, leg-
9 islative auditor and budget director on or before the
10 thirty-first day of August of each year. Such report shall
11 contain a summary of the board's proceedings during the
12 preceding fiscal year including a detailed and itemized
13 statement and summary of all state insurance procured
14 by the board during such fiscal year.

Sec. 5. *Powers and Duties of Board.*—The board shall

2 have general supervision and control over the insurance
3 of all state property, activities and responsibilities, in-
4 cluding the acquisition and cancellation thereof; determi-
5 nation of amount and kind of coverage, included but not
6 limited to deductible forms of insurance coverage, inspec-
7 tions or examinations relating thereto, reinsurance, and
8 any and all matters, factors and considerations entering
9 into negotiations for advantageous rates on and coverage
10 of all such state property, activities and responsibilities.
11 Any policy of insurance purchased or contracted for by
12 the board shall provide that the insured ^{shall} be barred
13 and estopped from relying upon the constitutional im-
14 munity of the state of West Virginia against claims or
15 suits. The board may enter into any contracts necessary
16 to the execution of the powers granted to it by this article.
17 It shall endeavor to secure the maximum of protection
18 against loss, damage or liability to state property and on
19 account of state activities and responsibilities by proper
20 and adequate insurance coverage through the introduc-
21 tion and employment of sound and accepted methods of

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22 protection and principles of insurance. It is empowered
23 and directed to make a complete survey of all presently
24 owned and subsequently acquired state property subject
25 to insurance coverage by any form of insurance, which
26 survey shall include and reflect inspections, appraisals,
27 exposures, fire hazards, construction, and any other ob-
28 jectives or factors affecting or which might affect the in-
29 surance protection and coverage required. It shall keep
30 itself currently informed on new and continuing state
31 activities and responsibilities within the insurance cover-
32 ages herein contemplated. The board shall work closely
33 in cooperation with the state fire marshal's office in ap-
34 plying the rules and regulations of that office insofar as
35 the appropriations and other factors peculiar to state
36 property will permit. The board is given power and au-
37 thority to make rules and regulations governing its func-
38 tions and operations and the procurement of state insur-
39 ance, but shall not make or promulgate any rules or reg-
40 ulations in contravention of or inconsistent with the laws
41 or rules and regulations governing the office of insurance
42 commissioner of West Virginia.

43 The board is hereby authorized and empowered to ne-
44 gotiate and effect settlement of any and all insurance
45 claims arising on or incident to losses of and damages to
46 state properties, activities and responsibilities hereunder
47 and shall have authority to execute and deliver proper
48 releases of all such claims when settled. The board may
49 adopt rules and procedures for handling, negotiating and
50 settlement of all such claims. All such settlements and
51 releases shall be effected with the knowledge and consent
52 of the attorney general.

Sec. 6. *State Records; Requirements; Penalties.*—(a) It
2 shall be the duty of every officer, department and em-
3 ployee of the state having custody or control of any
4 state property, activities or responsibilities, as defined in
5 section two of this article, to make a written report there-
6 of to the board, on forms prepared and prescribed by it,
7 briefly describing said property, activities or responsibili-
8 ties, showing the nature, location and estimated fair
9 market value of potential liability thereof and stating
10 whether such property, activities or responsibilities are
11 covered by insurance and, if insured, the nature, amount

12 and contract expiration date of such insurance and the
13 name and address of the insuring company or companies.
14 Such reports shall be made annually on or before the first
15 day of May and separate reports shall be made on newly
16 acquired state property from time to time within thirty
17 days next following the acquisition thereof. When any
18 such insured state property is sold, destroyed or otherwise
19 disposed of, the officer, department or employee of the
20 state having had the custody or control thereof shall make
21 a written report of such sale, destruction or other disposi-
22 tion of such property to the board within thirty days next
23 following the date of sale, destruction or other disposi-
24 tion thereof.

25 (b) The board shall assemble and organize all pertinent
26 information and data received and obtained by it on new
27 and continuing state property, activities and responsibili-
28 ties within the insurance coverage herein contemplated
29 and shall compile and currently maintain a summary rec-
30 ord thereon, in such form and detail as may be found
31 practicable, as basis for insurance services on all such
32 state property, activities and responsibilities.

Sec. 7. Placement of Insurance on State Property, Acti-

2 *vities and Responsibilities.*—(a) No officer, department or
3 employee of the state having control or custody of any
4 state property, or being in charge of any state activities,
5 or being charged with any state responsibilities as herein
6 contemplated, shall pay out any state money for the pur-
7 pose of insurance against loss, damage or liability to any
8 such state property or on account of any such state activ-
9 ity or responsibility or incur any obligation or indebted-
10 ness against the state for such insurance, except (1) upon
11 the board's prior approval and placement of such insur-
12 ance coverage and (2) its subsequent approval of invoices
13 and charges therefor.

14 (b) All state insurance shall be placed only with sol-
15 vent insurance companies licensed by insurance com-
16 missioner to transact insurance in West Virginia.

17 (c) All state insurance shall be placed only through
18 agents duly licensed by the insurance commissioner of
19 West Virginia and no more than five per cent of the total
20 premium volume of state insurance shall be placed through
21 any one agent or agency. For the purpose of this para-

22 graph, agent or agency shall include all employees, rela-
23 tives, partners or affiliates out of the agency with whom
24 such insurance is placed. In addition thereto no more than
25 fifteen per cent of the total premium volume of state in-
26 surance shall be placed in agencies in any one county.

27 (d) No insurance shall be placed with any member of
28 the board, the state insurance commissioner, official, of-
29 ficer or employee of the state of West Virginia, member
30 of the Legislature, member or officer of any state or coun-
31 ty political party executive committee, nor with the
32 spouse, parent or child of any such person, nor with any
33 corporation, any stockholder of which falls within the
34 classes herein enumerated.

Sec. 8. *All Powers, Duties and Responsibilities of the*
2 *Department of Purchases Pertaining to State Insurance*
3 *Hereby Transferred to State Board of Insurance.*—On the
4 effective date of this article, all powers, duties and func-
5 tions vested in the department of purchases relating to
6 insurance on state properties, activities and responsibili-
7 ties and all records and equipment relating thereto shall

8 be transferred by the department of purchases to the state
9 board of insurance.

Sec. 9. *Penalties for Violation of Article.*—Any person
2 placing or aiding, abetting, or conspiring to place state in-
3 surance in violation of any provision of this article shall
4 be guilty of a misdemeanor and upon conviction thereof
5 shall be fined not to exceed one thousand dollars or im-
6 prisoned for a period not to exceed six months, or may be
7 punished by both such fine and imprisonment.

Sec. 10. *Repeal of Inconsistent Laws.*—All laws or parts
2 of laws inconsistent with the provisions of this article are
3 hereby repealed, except in cases where the plain meaning
4 and context hereof otherwise provide for coordinate in-
5 terpretation and application of the provisions of this article
6 with any other laws.

Sec. 11. *Interpretation and Purpose; Constitutionality.*
2 —The provisions of this article are considered remedial
3 and shall be liberally construed and interpreted so as to
4 effect and accomplish the general purposes and objectives
5 hereof. In the event any part or provision of the article be
6 held to be unconstitutional by any court of competent

7 jurisdiction, such holding and decision of the court shall
8 not affect the validity and constitutionality of the remain-
9 ing parts and provisions of the article.

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

E. H. McCourt
Chairman Senate Committee

W. C. Hester
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

Thomas H. Upen
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Ralph J. Bean
President of the Senate

W. C. Hester
Speaker House of Delegates

The within approved this the 15th
day of March, 1957.

Jeff. H. Underwood
Governor



Filed in the Office of the Secretary of State
of West Virginia, MAR 15 1957
D. PITT O'BRIEN
SECRETARY OF STATE