WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED

HOUSE BILL No. 218

(By Mr. Speaker, Mr. Speaker's Name)

PASSED March 1, 1974

In Effect 90 days from Passage

EDGAR F. RICHELL, III
SECRETARY OF STATE

FILED IN THE OFFICE
THIS DATE 3-27-74
AN ACT to amend and reenact article eleven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unfair methods of competition and unfair and deceptive acts and practices in the business of insurance; penalties for violations; severability.

Be it enacted by the Legislature of West Virginia:

That article eleven, 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:

ARTICLE 11. UNFAIR TRADE PRACTICES.

§33-11-1. Declaration of purpose.

1 The purpose of this article 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.

§33-11-2. Definitions.

1 As used in this article:

2 (a) "Person" includes any individual, company, insurer,
association, organization, society, reciprocal, business trust, 
corporation, or any other legal entity, including agents and 
brokers. "Person" also includes hospital service corporations, 
medical service corporations and dental service corporations as 
defined in article twenty-four of this chapter, and health care 
corporations as defined in article twenty-five of this chapter. 
For purposes of this article hospital service corporations, medi-
cal service corporations, dental service corporations, and health 
care corporations shall be deemed to be in the business of in-
surance.

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

(c) "Insurance policy" or "insurance contract" means the 
contract effecting insurance, or the certificate thereof, by 
whatever name called, and includes all clauses, riders, en-
dorsements and papers attached thereto and a part thereof.

§33-11-3. Unfair methods of competition and unfair or deceptive 
acts or practices prohibited.

No person shall engage in this state in any trade practice 
which is defined in this article as, or determined pursuant to 
section seven of this article to be, an unfair method of compe-
tition or an unfair or deceptive act or practice in the business 
of insurance.

§33-11-4. Unfair methods of competition and unfair or deceptive 
acts or practices defined.

The following are hereby defined as unfair methods of 
competition and unfair or deceptive acts or practices in the 
business of insurance:

(1) Misrepresentation and false advertising of insurance 
policies.—No person shall make, issue, circulate, or cause to 
be made, issued or circulated, any estimate, circular, state-
ment, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or 
terms of any insurance policy; or

(b) Misrepresents the dividends or share of the surplus to 
be received on any insurance policy; or
(c) Make any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; or

(d) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; or

(e) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or

(f) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy; or

(g) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) Misrepresents any insurance policy as being shares of stock.

(2) False information and advertising generally.—No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, 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 or television station, or in any other way, an advertisement, 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.

(3) Defamation.—No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet or encourage 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 any person and which is calculated to injure such person.
(4) **Boycott, coercion and intimidation.**—No person shall enter into any agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(5) **False statements and entries.**—(a) No person shall knowingly file with any supervisory or other public official, or knowingly make, publish, disseminate, circulate or deliver to any person, or place before the public, or knowingly cause directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

(b) No person shall knowingly make any false entry of a material fact in any book, report or statement of any person or knowingly omit to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

(6) **Stock operations and advisory board contracts.**—No person shall issue or deliver or permit agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) **Unfair discrimination.**—(a) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium policy fees, or rates charged for any policy or contract of accident and sickness insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.
(c) As to kinds of insurance other than life and accident and sickness, no person shall make or permit any unfair discrimination in favor of particular persons, or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charge therefor. This paragraph shall not apply as to any premium or premium rate in effect pursuant to article twenty of this chapter.

(8) Rebates.—(a) Except as otherwise expressly provided by law, no person shall knowingly permit or offer to make or make any contract of life insurance, life annuity, or accident and sickness insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon, or pay or allow or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or give or sell, or purchase or offer to give, sell or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in subdivision seven or paragraph (a) of subdivision eight of this section shall be construed as including within the definition of unfair discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance: Provided, That any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(ii) In the case of life insurance policies issued on the
industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(iii) Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(iv) Issuing life or accident and sickness policies on a salary savings or payroll deduction plan at a reduced rate commensurate with the savings made by the use of such plan.

(c) With respect to insurance other than life, accident and sickness, ocean marine or marine protection and indemnity insurance, no person shall knowingly charge, demand or receive a premium for such insurance except in accordance with an applicable filing on file with the commissioner. No such person shall pay, allow or give, directly or indirectly, either as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. No insured named in a policy of insurance, nor any relative, representative or employee of such insured shall knowingly receive or accept directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents and brokers, nor as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word “insurance” includes suretyship and the word “policy” includes bond.

(9) Unfair claim settlement practices.—No person shall
commit or perform with such frequency as to indicate a general business practice any of the following:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when such insureds have made claims for amounts reasonably similar to the amounts ultimately recovered;

(h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) Making known to insureds or claimants a policy of
appealing from arbitration awards in favor of insureds or
claimants for the purpose of compelling them to accept settle-
ments or compromises less than the amount awarded in
arbitration;

(1) Delaying the investigation or payment of claims by
requiring an insured, claimant, or the physician of either
to submit a preliminary claim report and then requiring the
subsequent submission of formal proof of loss forms, both of
which submissions contain substantially the same information;

(m) Failing to promptly settle claims, where liability has
become reasonably clear, under one portion of the insurance
policy coverage in order to influence settlements under other
portions of the insurance policy coverage;

(n) Failing to promptly provide a reasonable explanation
of the basis in the insurance policy in relation to the facts
or applicable law for denial of a claim or for the offer of a
compromise settlement.

(10) Failure to maintain complaint handling procedures.
—No insurer shall fail to maintain a complete record of all
the complaints which it has received since the date of its
last examination under section nine, article two of this
chapter. This record shall indicate the total number of
complaints, their classification by line of insurance, the
nature of each complaint, the disposition of these complaints,
and the time it took to process each complaint. For purposes
of this subsection, "complaint" shall mean any written com-
munication primarily expressing a grievance.

(11) Misrepresentation in insurance applications.—No per-
son shall make false or fraudulent statements or representations
on or relative to an application for an insurance policy, for
the purpose of obtaining a fee, commission, money or other
benefit from any insurer, agent, broker or individual.

§33-11-5. Favored agent or insurer; coercion of debtors.

(a) No person may:

(1) Require, as a condition precedent to the lending of
money or extension of credit, or any renewal thereof, that
the person to whom such money or credit is extended or whose
obligation the creditor is to acquire or finance, negotiate
any policy or contract of insurance through a particular
insurer or group of insurers or agent or broker or group of
agents or brokers;

(2) Unreasonably disapprove the insurance policy provided
by a borrower for the protection of the property securing the
credit or lien;

(3) Require directly or indirectly that any borrower,
mortgagor, purchaser, insurer, broker, or agent pay a separate
charge, in connection with the handling of any insurance
policy required as security for a loan on real estate, or pay
a separate charge to substitute the insurance policy of one
insurer for that of another; or

(4) Use or disclose information resulting from a require-
ment that a borrower, mortgagor or purchaser furnish in-
surance of any kind on real property being conveyed or used
as collateral security to a loan, when such information is
to the advantage of the mortgagee, vendor, or lender, or
is to the detriment of the borrower, mortgagor, purchaser,
insurer, or the agent or broker complying with such a
requirement.

(b) (1) Subdivision (3), subsection (a) does not include
the interest which may be charged on premium loans or pre-
mium advancements in accordance with the security instrument.

(2) For purposes of subdivision (2), subsection (a) such
disapproval shall be deemed unreasonable if it is not based
solely on reasonable standards uniformly applied, relating
to the extent of coverage required and the financial soundness
and the services of an insurer. Such standards shall not dis-
 criminate against any particular type of insurer, nor shall such
standards call for the disapproval of an insurance policy be-
cause such policy contains coverage in addition to that required.

(3) The commissioner may investigate the affairs of any
person to whom this subsection applies to determine whether
such person has violated this subsection. If a violation of
the subsection is found, the person in violation shall be
subject to the same procedures and penalties as are applicable
to other provisions of this article.
(4) For purposes of this section, “person” includes any individual, corporation, association, partnership, or other legal entity.

§33-11-6. Violations, cease and desist and penalty orders and modifications thereof.

If, after notice and hearing, the commissioner determines that any person has engaged in or is engaging in any method of competition, act or practice in violation of the provisions of this article or any rules or regulations promulgated by the commissioner thereunder, the commissioner shall issue an order directing such person to cease and desist from engaging in such method of competition, act or practice, and in addition thereto, the commissioner may at his discretion order any one or more of the following:

(a) Require the payment to the state of West Virginia of a penalty in a sum not exceeding one thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of ten thousand dollars, unless the person knew or reasonably should have known he was in violation of this article, in which case the penalty shall be not more than five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any six month period.

(b) Revoke or suspend the license of such person if he knew or reasonably should have known that he was in violation of this article.

(c) No order of the commissioner pursuant to this article or order of court to enforce it, or holding of a hearing, shall in any manner relieve or absolve any person affected by such order or hearing from any other liability, penalty or forfeiture under law.

§33-11-7. Undefined acts or practices.

If, after notice and hearing, the commissioner determines that any person transacting insurance is engaging in this state in any method of competition or act or practice in the transacting of such insurance which is not defined in this article,
and that such method of competition is unfair or such act or
practice is unfair or deceptive, the commissioner shall issue an
order directing such person to cease and desist from engaging
in such method of competition, act or practice.

§33-11-8. Penalty for violation of cease and desist orders.

If, after notice and hearing, the commissioner determines
that any person has violated a cease and desist order issued by
the commissioner and which such order is still in effect, the
commissioner may at his discretion order any one or more of
the following:

(a) Require the payment to the state of West Virginia of a
penalty in a sum not exceeding ten thousand dollars for each
and every act or violation.

(b) Revoke or suspend the license of such person.


The powers vested in the commissioner by this article, shall
be additional to any other powers to enforce any penalties, fines
or forfeitures authorized by law with respect to the methods,
acts and practices hereby declared to be unfair or deceptive.

§33-11-10. Severability.

In the event any provision of this article, or the application
of such provision to any person or circumstance, shall be held
unconstitutional or otherwise invalid by any court of compe-
tent jurisdiction, the remainder of this article or the applica-
tion of the provisions to other persons or circumstances shall
not be affected thereby.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within _______ approved ________ this the ________ day of ________, 1974.

[Signature]
Governor
PRESENTED TO THE GOVERNOR

Date  3/15/74

Time  2:50 PM.