

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974



ENROLLED

HOUSE BILL No. 718

(By Mr. Speaker, Mr. McManus & Mr. Lister)



PASSED March 1 1974

In Effect 90 days Passage



718

FILED IN THE OFFICE
EDGAR F. WEISKELL III
SECRETARY OF STATE
THIS DATE 3-27-74

ENROLLED

H. B. 718

(By MR. SPEAKER, MR. MCMANUS, and MR. SEIBERT)

[Passed March 1, 1974; in effect ninety days from passage.]

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
2 the business of insurance in accordance with the intent of
3 Congress as expressed in the act of Congress of March ninth,
4 one thousand nine hundred forty-five (Public Law fifteen, sev-
5 enty-ninth Congress), by defining, or providing for the deter-
6 mination of, all such practices in this state which constitute
7 unfair methods of competition or unfair or deceptive acts or
8 practices and by prohibiting the trade practices so defined or
9 determined.

§33-11-2. Definitions.

1 As used in this article:
2 (a) "Person" includes any individual, company, insurer,

3 association, organization, society, reciprocal, business trust,
4 corporation, or any other legal entity, including agents and
5 brokers. "Person" also includes hospital service corporations,
6 medical service corporations and dental service corporations as
7 defined in article twenty-four of this chapter, and health care
8 corporations as defined in article twenty-five of this chapter.
9 For purposes of this article hospital service corporations, medi-
10 cal service corporations, dental service corporations, and health
11 care corporations shall be deemed to be in the business of in-
12 surance.

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

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

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

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

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

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

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

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

10 (b) Misrepresents the dividends or share of the surplus to
11 be received on any insurance policy; or

12 (c) Make any false or misleading statements as to the
13 dividends or share of surplus previously paid on any insurance
14 policy; or

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

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

21 (f) Is a misrepresentation for the purpose of inducing
22 or tending to induce the lapse, forfeiture, exchange, conver-
23 sion, or surrender of any insurance policy; or

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

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

29 (2) *False information and advertising generally.*—No per-
30 son shall make, publish, disseminate, circulate or place before
31 the public, or cause, directly or indirectly, to be made,
32 published, disseminated, circulated, or placed before the
33 public, in a newspaper, magazine or other publication, or
34 in the form of a notice, circular, pamphlet, letter or poster
35 or over any radio or television station, or in any other way,
36 an advertisement, announcement or statement containing any
37 assertion, representation or statement with respect to the
38 business of insurance or with respect to any person in the
39 conduct of his insurance business, which is untrue, deceptive
40 or misleading.

41 (3) *Defamation.*—No person shall make, publish, dissem-
42 inate, or circulate, directly or indirectly, or aid, abet or
43 encourage the making, publishing, disseminating or circulating
44 of any oral or written statement or any pamphlet, circular,
45 article or literature which is false, or maliciously critical
46 of or derogatory to the financial condition of any person and
47 which is calculated to injure such person.

48 (4) *Boycott, coercion and intimidation.*—No person shall
49 enter into any agreement to commit, or by any concerted
50 action commit, any act of boycott, coercion or intimidation
51 resulting in or tending to result in unreasonable restraint of,
52 or monopoly in, the business of insurance.

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

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

66 (6) *Stock operations and advisory board contracts.*—No
67 person shall issue or deliver or permit agents, officers or
68 employees 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 advisory
71 board contracts or other contracts of any kind promising
72 returns and profits as an inducement to insurance.

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

79 (b) No person shall make or permit any unfair dis-
80 crimination between individuals of the same class and of
81 essentially the same hazard in the amount of premium policy
82 fees, or rates charged for any policy or contract of accident
83 and sickness insurance or in the benefits payable thereunder,
84 or in any of the terms or conditions of such contract, or in
85 any other manner whatever.

86 (c) As to kinds of insurance other than life and accident
87 and sickness, no person shall make or permit any unfair
88 discrimination in favor of particular persons, or between in-
89 sureds or subjects of insurance having substantially like
90 insuring, risk and exposure factors or expense elements, in the
91 terms or conditions of any insurance contract, or in the rate
92 or amount of premium charge therefor. This paragraph shall
93 not apply as to any premium or premium rate in effect pursuant
94 to article twenty of this chapter.

95 (8) *Rebates.*—(a) Except as otherwise expressly provided
96 by law, no person shall knowingly permit or offer to make
97 or make any contract of life insurance, life annuity, or
98 accident and sickness insurance, or agreement as to such
99 contract other than as plainly expressed in the insurance
100 contract issued thereon, or pay or allow or give or offer
101 to pay, allow, or give, directly or indirectly, as inducement
102 to such insurance or annuity, any rebate of premiums payable
103 on the contract, or any special favor or advantage in the
104 dividends or other benefits thereon, or any valuable con-
105 sideration or inducement whatever not specified in the contract;
106 or give or sell, or purchase or offer to give, sell or purchase
107 as inducement to such insurance contract or annuity or in
108 connection therewith, any stocks, bonds, or other securities
109 of any insurance company or other corporation, association,
110 or partnership, or any dividends or profits accrued thereon,
111 or anything of value whatsoever not specified in the contract.

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

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

123 (ii) In the case of life insurance policies issued on the

124 industrial debit plan, making allowance to policyholders who
125 have continuously for a specified period made premium
126 payments directly to an office of the insurer in an amount
127 which fairly represents the saving in collection expenses;

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

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

136 (c) With respect to insurance other than life, accident and
137 sickness, ocean marine or marine protection and indemnity in-
138 surance, no person shall knowingly charge, demand or receive
139 a premium for such insurance except in accordance with an ap-
140 plicable filing on file with the commissioner. No such person
141 shall pay, allow or give, directly or indirectly, either as an
142 inducement to insurance or after insurance has been effected,
143 any rebate, discount, abatement, credit or reduction of the pre-
144 mium named in a policy of insurance, or any special favor
145 or advantage in the dividends or other benefits to accrue there-
146 on, or any valuable consideration or inducement whatever, not
147 specified in the policy of insurance, except to the extent
148 provided for in an applicable filing. No insured named in a
149 policy of insurance, nor any relative, representative or employee
150 of such insured shall knowingly receive or accept directly or
151 indirectly, any such rebate, discount, abatement, credit or re-
152 duction of premium, or any such special favor or advantage
153 or valuable consideration or inducement. Nothing in this
154 section shall be construed as prohibiting the payment of com-
155 missions or other compensation to duly licensed agents and
156 brokers, nor as prohibiting any insurer from allowing or re-
157 turning to its participating policyholders, members or sub-
158 scribers, dividends, savings or unabsorbed premium deposits.
159 As used in this section the word "insurance" includes suretyship
160 and the word "policy" includes bond.

161 (9) *Unfair claim settlement practices.*—No person shall

162 commit or perform with such frequency as to indicate a general
163 business practice any of the following:

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

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

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

172 (d) Refusing to pay claims without conducting a reason-
173 able investigation based upon all available information;

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

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

180 (g) Compelling insureds to institute litigation to recover
181 amounts due under an insurance policy by offering sub-
182 stantially less than the amounts ultimately recovered in actions
183 brought by such insureds, when such insureds have made
184 claims for amounts reasonably similar to the amounts ulti-
185 mately recovered;

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

190 (i) Attempting to settle claims on the basis of an applica-
191 tion which was altered without notice to, or knowledge or
192 consent of the insured;

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

196 (k) Making known to insureds or claimants a policy of

197 appealing from arbitration awards in favor of insureds or
198 claimants for the purpose of compelling them to accept settle-
199 ments or compromises less than the amount awarded in
200 arbitration;

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

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

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

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

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

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

1 (a) No person may:

2 (1) Require, as a condition precedent to the lending of
3 money or extension of credit, or any renewal thereof, that
4 the person to whom such money or credit is extended or whose

5 obligation the creditor is to acquire or finance, negotiate
6 any policy or contract of insurance through a particular
7 insurer or group of insurers or agent or broker or group of
8 agents or brokers;

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

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

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

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

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

37 (3) The commissioner may investigate the affairs of any
38 person to whom this subsection applies to determine whether
39 such person has violated this subsection. If a violation of
40 the subsection is found, the person in violation shall be
41 subject to the same procedures and penalties as are applicable
42 to other provisions of this article.

43 (4) For purposes of this section, "person" includes any
44 individual, corporation, association, partnership, or other legal
45 entity.

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

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

10 (a) Require the payment to the state of West Virginia of a
11 penalty in a sum not exceeding one thousand dollars for each
12 and every act or violation, but not to exceed an aggregate pen-
13 alty of ten thousand dollars, unless the person knew or reason-
14 ably should have known he was in violation of this article, in
15 which case the penalty shall be not more than five thousand
16 dollars for each and every act or violation, but not to exceed
17 an aggregate penalty of fifty thousand dollars in any six
18 month period.

19 (b) Revoke or suspend the license of such person if he
20 knew or reasonably should have known that he was in viola-
21 tion of this article.

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

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

1 If, after notice and hearing, the commissioner determines
2 that any person transacting insurance is engaging in this state
3 in any method of competition or act or practice in the trans-
4 action of such insurance which is not defined in this article,

5 and that such method of competition is unfair or such act or
6 practice is unfair or deceptive, the commissioner shall issue an
7 order directing such person to cease and desist from engaging
8 in such method of competition, act or practice.

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

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

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

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

§33-11-9. Provisions of article additional to existing law.

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

§33-11-10. Severability.

1 In the event any provision of this article, or the application
2 of such provision to any person or circumstance, shall be held
3 unconstitutional or otherwise invalid by any court of compe-
4 tent jurisdiction, the remainder of this article or the applica-
5 tion of the provisions to other persons or circumstances shall
6 not be affected thereby.

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

H. Laurel Darby
Chairman Senate Committee

Clarence C. Christian Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

H. P. Brotherton, Jr.
President of the Senate

Lewis F. McNamee
Speaker House of Delegates

The within approved this the 26th
day of March, 1974.

Archie Shivers Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/15/74

Time 2:50 PM.