

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-80

Time 9:00 A.M.

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1980**



**ENROLLED**

**SENATE BILL NO. 454**

(By Mr. Susman)



PASSED March 8 1980

In Effect July 1, 1980 **Passage**



*No. 454*

**ENROLLED**  
**Senate Bill No. 454**  
(By MR. SUSMAN)

[Passed March 8, 1980; in effect July 1, 1980.]

AN ACT to amend and reenact section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state insurance commissioner; creating a commissioner's examination revolving fund; and provision for the Legislature to appropriate money to start the fund.

*Be it enacted by the Legislature of West Virginia:*

That section nine, article two, 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 2. INSURANCE COMMISSIONER.**

**§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.**

1 (a) The commissioner or his accredited examiners  
2 shall, at such times as he deems necessary, but at least  
3 once every three years, visit each domestic insurer and  
4 thoroughly examine its financial condition and methods  
5 of doing business and ascertain whether it has complied  
6 with all the laws and regulations of this state. The com-  
7 missioner at such times as he deems necessary may  
8 cause an examination to be conducted of any foreign or  
9 alien insurer licensed to transact insurance in this state;  
10 personnel conducting an examination of either a domestic  
11 or foreign insurer shall be compensated for each day  
12 worked at a rate set by the commissioner. Such personnel  
13 shall also be reimbursed for their travel and living  
14 expenses at the rate set by the commissioner. Personnel  
15 who are appointed by the commissioner, but are not em-  
16 ployees of the department of insurance, shall be compen-  
17 sated for their work, and travel and living expenses at  
18 rates approved by the commissioner, or as otherwise  
19 provided by law. If the laws of another state require  
20 or permit the insurance department or other authority

21 thereof to make examinations of insurance companies  
22 of this state at the expense of such companies, the ex-  
23 penses of the commissioner in making an examination  
24 of an insurance company of such other state shall be  
25 charged to and collected from such company in the man-  
26 ner prescribed by the commissioner. The commissioner  
27 shall provide each company with an itemized statement  
28 of the expenses incurred in conducting the examination  
29 and shall certify a copy of such statement to the treasurer  
30 of the state. Upon receipt of the commissioner's state-  
31 ment, the company shall remit the amount thereof to  
32 the commissioner who shall remit that amount to the  
33 treasurer of the state for deposit in the commissioner's  
34 examination revolving fund. As used in this section  
35 "expenses" means: (1) The entire compensation for each  
36 day worked by all personnel, including those who are  
37 not employees of the department of insurance, the con-  
38 duct of such examination calculated as hereinbefore  
39 provided; (2) travel and living expenses of all personnel,  
40 including those who are not employees of the depart-  
41 ment of insurance, directly engaged in the conduct of  
42 such examination, calculated at the rates as hereinbefore  
43 provided for; (3) all other incidental expenses incurred  
44 by or on behalf of such personnel in the conduct of such  
45 authorized examination. All moneys collected by the  
46 commissioner of insurance for expenses incurred by him  
47 in conducting examinations of the financial affairs of any  
48 insurance company doing business in this state for  
49 which such insurance company examined is required to  
50 pay the costs, shall be paid to the commissioner and by  
51 him paid to the treasurer of the state to the credit of a  
52 special revolving fund to be known as the "commis-  
53 sioner's examination revolving fund" which is hereby  
54 established: *Provided*, That at the end of each fiscal year  
55 should such fund contain a sum of money in excess of  
56 one hundred thousand dollars then the amount of such  
57 excess shall revert to and be placed in the general  
58 revenue fund of this state. The Legislature may appropri-  
59 ate moneys to start such rotary fund. Any funds ex-  
60 pended or obligated therefrom by the commissioner shall  
61 be expended or obligated solely for defrayment of the

62 costs of examinations of the financial affairs of insurance  
63 companies made by the commissioner pursuant to this  
64 section. For purposes of this section, "insurance com-  
65 pany" includes any domestic or foreign stock company,  
66 mutual company, mutual protective association, farmers  
67 mutual fire companies, fraternal benefit society, reciprocal  
68 or inter-insurance exchange, nonprofit medical care  
69 corporation, nonprofit health care corporation, nonprofit  
70 hospital service association, nonprofit dental care corpor-  
71 ation, health maintenance organization, or other insurer,  
72 regardless of the type of coverage written, benefits pro-  
73 vided, or guarantees made by each. The commissioner  
74 shall make a full written report of each such examina-  
75 tion of an insurer, certified to by the commissioner or  
76 the examiner in charge of such examination. The com-  
77 missioner shall furnish a copy of the report to the in-  
78 surer examined not less than ten days prior to filing the  
79 same in his office. If such insurer so requests in writing,  
80 within such ten-day period, the commissioner shall con-  
81 sider the objections of such insurer to the report as  
82 proposed, and shall not so file the report until after such  
83 modifications, if any, have been made therein as the  
84 commissioner deems proper. The report, when filed, shall  
85 be admissible in evidence in any action or proceeding  
86 brought by the commissioner against the insurer ex-  
87 amined, or its officers or agents, and shall be prima  
88 facie evidence of the facts stated therein. The commis-  
89 sioner or his examiners may at any time testify and  
90 offer other proper evidence as to information secured  
91 during the course of an examination, whether or not a  
92 written report of the examination has at that time been  
93 either made, served or filed in the commissioner's office.  
94 The examination of an alien insurer shall be limited  
95 to its United States business. In lieu of making his own  
96 examination, the commissioner may accept a full report  
97 of the last recent examination of a foreign or alien in-  
98 surer, certified to by the insurance supervisory official  
99 of the state of domicile of a foreign insurer or the state  
100 of entry into the United States of an alien insurer.

101 (b) The commissioner may also cause to be examined  
102 at such times as he deems necessary the books, records,

103 papers, documents, correspondence and methods of doing  
104 business of any agent, broker or solicitor licensed by  
105 this state.

106 (c) For such purposes the commissioner, his deputies  
107 and employees shall have free access to all books, records,  
108 papers, documents and correspondence of all such in-  
109 surers (whether domestic, foreign or alien), agents,  
110 brokers and solicitors wherever such books, records,  
111 papers, documents and records are situate.

112 (d) The commissioner may revoke the license of any  
113 such insurer, agent, broker or solicitor who refuses to  
114 submit to such examination.

115 (e) The commissioner may withhold from public in-  
116 spection any examination or investigation report for such  
117 time as he may deem prudent, but no such report shall  
118 be withheld from public inspection for longer than ninety  
119 days after the same has been filed.

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

*James R. Davis*  
Chairman Senate Committee

*Charles C. Chustor Jr*  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1980.

*Fred C. Mills*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*W. P. Brantley*  
President of the Senate

*Clayton M. Lee*  
Speaker House of Delegates

The within is approved this the 26  
day of March, 1980

*John D. Roper*  
Governor



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