

No: 1851

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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HOUSE BILL No. 1851

(By ~~Mr.~~ Del. Yarnie + Del. Mastrantonio)

Passed April 13, 1985

In Effect 90 Days From Passage



ENROLLED
H. B. 1851

(By DELEGATE YANNI AND DELEGATE MASTRANTONI)

[Passed April 13, 1985; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article eleven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment of insurance benefits; when benefits must be paid; exceptions; penalties.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§33-11-4. 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
6 to be made, issued or circulated, any estimate, circular,
7 statement, 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 financial
16 condition of any person, or as to the legal reserve system upon
17 which any life insurer operates; or

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

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

24 (g) Is a misrepresentation for the purpose of effecting a
25 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
30 person shall make, publish, disseminate, circulate or place
31 before the public, or cause, directly or indirectly, to be made,
32 published, disseminated, circulated or place before the public,
33 in a newspaper, magazine or other publication, or in the form
34 of a notice, circular, pamphlet, letter or poster or over any
35 radio or television station, or in any other way, an advertise-
36 ment, announcement or statement containing any assertion,
37 representation or statement with respect to the business of
38 insurance or with respect to any person in the conduct of his
39 insurance business, which is untrue, deceptive or misleading.

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

47 (4) *Boycott, coercion and intimidation.* — No person shall
48 enter into any agreement to commit, or by any concerted
49 action commit, any act of boycott, coercion or intimidation

50 resulting in or tending to result in unreasonable restraint of,
51 or monopoly in, the business of insurance.

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

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

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

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

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

85 (c) As to kinds of insurance other than life and accident and
86 sickness, no person shall make or permit any unfair discrim-
87 ination in favor of particular persons, or between insureds or
88 subjects of insurance having substantially like insuring, risk

89 and exposure factors or expense elements, in the terms or
90 conditions of any insurance contract, or in the rate or amount
91 of premium charge therefor. This paragraph shall not apply
92 as to any premium or premium rate in effect pursuant to
93 article twenty of this chapter.

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

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

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

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

127 (iii) Readjustment of the rate of premium for a group
128 insurance policy based on the loss or expense thereunder, at

129 the end of the first or any subsequent policy year of insurance
130 thereunder, which may be made retroactive only for such
131 policy year;

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

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

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

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

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

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

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

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

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

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

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

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

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

195 (k) Making known to insureds or claimants a policy of
196 appealing from arbitration awards in favor of insureds or
197 claimants for the purpose of compelling them to accept
198 settlements or compromises less than the amount awarded in
199 arbitration;

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

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

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

213 (o) Failing to notify the first party claimant and the
214 provider(s) of services covered under accident and sickness
215 insurance and hospital and medical service corporation
216 insurance policies whether the claim has been accepted or
217 denied and if denied, the reasons therefore, within fifteen
218 calendar days from the filing of the proof of loss: *Provided*,
219 That should benefits due the claimant be assigned, notice to
220 the claimant shall not be required: *Provided, however*, That
221 should the benefits be payable directly to the claimant, notice
222 to the health care provider shall not be required. If the insurer
223 needs more time to investigate the claim, it shall so notify the
224 first party claimant in writing within fifteen calendar days from
225 the date of the initial notification and every thirty calendar
226 days, thereafter; but in no instance shall a claim remain
227 unsettled and unpaid for more than ninety calendar days from
228 the first party claimant's filing of the proof of loss unless there
229 is, as determined by the insurance commissioner, (1) a
230 legitimate dispute as to coverage, liability or damages; or (2)
231 if the claimant has fraudulently caused or contributed to the
232 loss. In the event that the insurer fails to pay the claim in full
233 within ninety calendar days from the claimant's filing of the
234 proof of loss, except for exemptions provided above, there
235 shall be assessed against the insurer and paid to the insured
236 a penalty which will be in addition to the amount of the claim
237 and assessed as interest on such at the then current prime rate
238 plus one percent. Any penalty paid by an insurer pursuant to
239 this section shall not be a consideration in any rate filing made
240 by such insurer.

241 (10) *Failure to maintain complaint handling procedures.* —
242 No insurer shall fail to maintain a complete record of all the
243 complaints which it has received since the date of its last
244 examination under section nine, article two of this chapter.
245 This record shall indicate the total number of complaints, their

246 classification by line of insurance, the nature of each
247 complaint, the disposition of these complaints, and the time
248 it took to process each complaint. For purposes of this
249 subsection, "complaint" shall mean any written communica-
250 tion primarily expressing a grievance.

251 (11) *Misrepresentation in insurance applications.* — No
252 person shall make false or fraudulent statements or represen-
253 tations on or relative to an application for an insurance policy,
254 for the purpose of obtaining a fee, commission, money or
255 other benefit from any insurer, agent, broker or individual.

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

Darrell E. Helms

Chairman Senate Committee

Floyd Fullen
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Walker

Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Dem. Turkumil

President of the Senate

Joseph P. Allright
Speaker of the House of Delegates

The within *approved* this the *2nd*
May day of _____, 1985.

Arva Probst
Governor



PRESENTED TO THE

GOVERNOR

Date 4/25/85

Time 2:39 p.m.