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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for

HOUSE BILL No. 2417

(By Mr. Speaker, Mr. Chambers & Del. R. Bank)
[By Request of the Executive]

— ● —

Passed April 8, 1989

In Effect July 1, 1989 Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 2417

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)
[By Request of the Executive]

[Passed April 8, 1989; in effect July 1, 1989.]

AN ACT to amend and reenact section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty of said chapter; to amend and reenact section six, article twenty-four of said chapter, to amend and reenact section eight, article twenty-five of said chapter; and to amend section eight, article twenty-five-a of said chapter, all relating to extending of the rate and form filings review period on all rate and form filings involving insurance to sixty days; and notice of rate increase requests.

Be it enacted by the Legislature of West Virginia:

That section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article twenty of said chapter be amended and reenacted; that section six, article twenty-four of said chapter be amended and reenacted; that section eight, article twenty-five of said chapter be amended and reenacted; and that section eight, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-8. Approval of forms.

1 (a) Except as provided in section eight, article
2 seventeen of this chapter (fire and marine forms), no
3 insurance policy form, no group certificate form, no
4 insurance application form where written application is
5 required and is to be made a part of the policy, and no
6 rider, endorsement or other form to be attached to any
7 policy, shall be delivered or issued for delivery in this
8 state by an insurer unless it has been filed with and
9 approved by the commissioner, except that as to group
10 insurance policies delivered outside this state, only the
11 group certificates to be delivered or issued for delivery
12 in this state shall be filed with the commissioner upon
13 his request. This section shall not apply to policies,
14 riders, endorsements or forms of unique character
15 designed for and used with relation to insurance upon
16 a particular subject, or which relate to the manner of
17 distribution of benefits or to the reservation of rights
18 and benefits under life or accident and sickness
19 insurance policies, and are used at the request of the
20 individual policyholder, contract holder or certificate
21 holder, nor to the surety bond forms.

22 (b) Every such filing shall be made not less than sixty
23 days in advance of any such delivery. At the expiration
24 of such sixty days, the form so filed shall be deemed
25 approved unless prior thereto it has been affirmatively
26 approved or disapproved by the commissioner. Approval
27 of any such form by the commissioner shall constitute
28 a waiver of any unexpired portion of such waiting
29 period. The commissioner may at any time, after notice
30 and for cause shown, withdraw any such approval.

31 (c) Any order of the commissioner disapproving any
32 such form or withdrawing a previous approval shall
33 state the grounds therefor.

34 (d) The commissioner may, by order, exempt from the
35 requirements of this section for so long as he deems
36 proper any insurance document or form or type thereof
37 as specified in such order, to which, in his opinion, this
38 section may not practicably be applied, or the filing and

39 approval of which are, in his opinion, not desirable or
40 necessary for the protection of the public.

41 (e) Notwithstanding any other provisions of this
42 section, any mass marketed life and/or health insurance
43 policy offered to members of any association by an
44 association where the primary purpose of such associ-
45 ation is other than the sale of insurance to its members,
46 shall be exempt from the provision requiring prior
47 approval under this section.

48 (f) This section shall apply also to any form used by
49 domestic insurers for delivery in a jurisdiction outside
50 West Virginia, if the insurance supervisory official of
51 such jurisdiction informs the commissioner that such
52 form is not subject to approval or disapproval by such
53 official, and upon the commissioner's order requiring
54 the form to be submitted to him for the purpose. The
55 applicable same standards shall apply to such forms as
56 apply to forms for domestic use.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-4. Rate filings.

1 (a) (1) Every insurer shall file with the commissioner
2 every manual of classifications, territorial rate areas
3 established pursuant to subdivision (c) (2), section three
4 of this article, rules and rates, every rating plan and
5 every modification of any of the foregoing which it
6 proposes to use for casualty insurance to which this
7 article applies.

8 (2) Every insurer shall file with the commissioner,
9 except as to inland marine risks which by general
10 custom of the business are not written according to
11 manual rates or rating plans, every manual, minimum,
12 class rate, rating schedule or rating plan and every
13 other rating rule and every modification of any of the
14 foregoing which it proposes to use for fire and marine
15 insurance to which this article applies. Specific inland
16 marine rates on risks specially rated, made by a rating
17 organization, shall be filed with the commissioner.

18 (b) Every such filing shall state the proposed effective
19 date thereof and shall indicate the character and extent

20 of the coverage contemplated. When a filing is not
21 accompanied by the information upon which the insurer
22 supports such filing, and the commissioner does not have
23 sufficient information to determine whether such filing
24 meets the requirements of this article, he shall require
25 such insurer to furnish the information upon which it
26 supports such filing and in such event the waiting
27 period shall commence as of the date such information
28 is furnished. The information furnished in support of a
29 filing may include (1) the experience or judgment of the
30 insurer or rating organization making the filing, (2) the
31 experience or judgment of the insurer or rating
32 organization in the territorial rate areas established by
33 subdivision (c) (2), section three of this article, (3) its
34 interpretation of any statistical data it relies upon,
35 (4) the experience of other insurers or rating organiza-
36 tions or (5) any other relevant factors. A filing and any
37 supporting information shall be open to public inspec-
38 tion as soon as the filing is received by the commis-
39 sioner. Any interested party may file a brief with the
40 commissioner supporting his position concerning the
41 filing. Any person or organization may file with the
42 commissioner a signed statement declaring and support-
43 ing his or its position concerning the filing. Upon receipt
44 of such statement prior to the effective date of the filing,
45 the commissioner shall mail or deliver a copy of such
46 statement to the filer, which may file such reply as it
47 may desire to make. This section shall not be applicable
48 to any memorandum or statement of any kind by any
49 employee of the commissioner.

50 (c) An insurer may satisfy its obligation to make such
51 filing by becoming a member of, or a subscriber to, a
52 licensed rating organization which makes such filings,
53 and by authorizing the commissioner to accept such
54 filings on its behalf: **Provided,** That nothing contained
55 in this article shall be construed as requiring any
56 insurer to become a member of or a subscriber to any
57 rating organization.

58 (d) The commissioner shall review filings as soon as
59 reasonably possible after they have been made in order
60 to determine whether they meet the requirements of this

61 article.

62 (e) Subject to the exceptions specified in subsections
63 (f) and (g) of this section, each filing shall be on file for
64 a waiting period of sixty days before it becomes
65 effective. Upon written application by such insurer or
66 rating organization, the commissioner may authorize a
67 filing which he has reviewed to become effective before
68 the expiration of the waiting period. A filing shall be
69 deemed to meet the requirements of this article unless
70 disapproved by the commissioner within the waiting
71 period.

72 (f) Any special filing with respect to a surety bond
73 required by law or by court or executive order or by
74 order, rule or regulation of a public body, not covered
75 by a previous filing, shall become effective when filed
76 and shall be deemed to meet the requirements of this
77 article until such time as the commissioner reviews the
78 filing and so long thereafter as the filing remains in
79 effect.

80 (g) Specific inland marine rates on risks specially
81 rated by a rating organization shall become effective
82 when filed and shall be deemed to meet the require-
83 ments of this article until such time as the commissioner
84 reviews the filing and so long thereafter as the filing
85 remains in effect.

86 (h) Under such rules and regulations as he shall adopt
87 the commissioner may, by written order, suspend or
88 modify the requirement of filing as to any kind of
89 insurance, subdivision or combination thereof, or as to
90 classes of risks, the rates for which cannot practicably
91 be filed before they are used. Such orders, rules and
92 regulations shall be made known to insurers and rating
93 organizations affected thereby. The commissioner may
94 make such examination as he may deem advisable to
95 ascertain whether any rates affected by such order meet
96 the standards set forth in subdivision (b), section three
97 of this article.

98 (i) Upon the written application of the insured,
99 stating his reasons therefor, filed with and approved by
100 the commissioner, a rate in excess of that provided by

101 a filing otherwise applicable may be used on any specific
102 risks.

103 (j) No insurer shall make or issue a contract or policy
104 except in accordance with the filings which are in effect
105 for said insurer as provided in this article or in
106 accordance with subsection (h) or (i) of this section. This
107 subsection shall not apply to contracts or policies for
108 inland marine risks as to which filings are not required.

109 (k) In instances when an insurer files a request for an
110 increase of automobile liability insurance rates in the
111 amount of fifteen percent or more, the insurance
112 commissioner shall provide notice of such increase with
113 the office of the secretary of state to be filed in the state
114 register and shall provide interested persons the
115 opportunity to comment on such request up to the time
116 the commissioner approves or disapproves such rate
117 increase.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS AND DENTAL SER-
VICE CORPORATIONS.**

**§33-24-6. Commissioner to enforce article; approval of
contracts, forms, rates and fees.**

1 (a) It shall be the duty of the commissioner to enforce
2 the provisions of this article.

3 (b) No such corporation shall deliver or issue for
4 delivery any subscriber's contract, changes in the terms
5 of such contract, application, rider or endorsement, until
6 a copy thereof and the rates pertaining thereto have
7 been filed with and approved by the commissioner. All
8 such forms filed with the commissioner shall be deemed
9 approved after the expiration of sixty days from the date
10 of such filing unless the commissioner shall have
11 disapproved the same, stating his reasons for such
12 disapproval in writing. Such forms may be used prior
13 to the expiration of such periods if written approval
14 thereof has been received from the commissioner.

15 (c) No rates to be charged subscribers shall be used
16 or established by any such corporation unless and until
17 the same have been filed with the commissioner and

18 approved by him. The procedure for such filing and
19 approval shall be the same as that prescribed in
20 paragraph (b) of this section for the approval of forms.
21 The commissioner shall approve all such rates which are
22 not excessive, inadequate or unfairly discriminatory.

23 (d) The commissioner shall pass upon the actuarial
24 soundness of the schedule of fees to be paid hospitals,
25 physicians, dentists and other health agencies.

ARTICLE 25. HEALTH CARE CORPORATIONS.

**§33-25-8. Commissioner to enforce article; approval of
contracts, forms and rates; reserve fund;
membership fee.**

1 (a) It shall be the duty of the commissioner to enforce
2 the provisions of this article.

3 (b) No such corporation shall deliver or issue for
4 delivery any subscriber's contract, changes in the terms
5 of such contract, application, rider or endorsement until
6 a copy thereof and the rates pertaining thereto have
7 been filed with and approved by the commissioner. All
8 such forms filed with the commissioner shall be deemed
9 approved after the expiration of sixty days from the date
10 of such filing unless the commissioner shall have
11 disapproved the same, stating his reasons for such
12 disapproval in writing. Such forms may be used prior
13 to the expiration of such periods if written approval
14 thereof has been received from the commissioner.

15 (c) No rates to be charged subscribers shall be used
16 or established by any such corporation unless and until
17 the same have been filed with the commissioner and
18 approved by him. The procedure for such filing and
19 approval shall be the same as that prescribed in
20 paragraph (b) of this section for the approval of forms.
21 The commissioner shall approve all such rates which are
22 not excessive, inadequate, or unfairly discriminatory.

23 (d) The commissioner shall pass upon the actuarial
24 soundness of all direct health care services plans.

25 (e) The corporation shall accumulate a fund to be
26 derived from a minimum of two percent of every

27 subscriber's monthly premium which shall be known as
28 a contingency and liability reserve fund except that the
29 same shall not exceed an amount equal to three months'
30 average obligation of said corporation, nor shall it fall
31 below a minimum of one month's average obligation of
32 said corporation. Said fund shall be expended by the
33 corporation according to rules and regulations to be
34 promulgated by the commissioner.

35 In addition to the above requirements, every sub-
36 scriber shall pay into the corporation a membership fee
37 equal to one monthly premium. The membership fee
38 shall be collected in full by said corporation within
39 ninety days of said subscriber's application for
40 membership.

41 (f) Each such rate filing and each such form filing
42 made with the commissioner pursuant to this section is
43 subject to the filing fee of section thirty-four, article six
44 of this chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.

1 (1) (a) Every enrollee is entitled to evidence of
2 coverage in accordance with this section. The health
3 maintenance organization or its designated representa-
4 tive shall issue the evidence of coverage.

5 (b) No evidence of coverage, or amendment thereto,
6 shall be issued or delivered to any person in this state
7 until a copy of the form of the evidence of coverage, or
8 amendment thereto, has been filed with and approved
9 by the commissioner.

10 (c) An evidence of coverage shall contain a clear,
11 concise and complete statement of (i) the health care
12 services and the insurance or other benefits, if any, to
13 which the enrollee is entitled; (ii) any exclusions or
14 limitations on the services, kind of services, benefits, or
15 kind of benefits, to be provided, including any copay-
16 ments; (iii) where and in what manner information is
17 available as to how services, including emergency and

18 out-of-area services, may be obtained; (iv) the total
19 amount of payment and copayment, if any, for health
20 care services and the indemnity or service benefits, if
21 any, which the enrollee is obligated to pay with respect
22 to individual contracts, or an indication whether the
23 plan is contributory or noncontributory with respect to
24 group certificates; and (v) a description of the health
25 maintenance organization's method for resolving enrol-
26 lee complaints.

27 (d) Any subsequent approved change in an evidence
28 of coverage shall be issued to each enrollee.

29 (e) A copy of the form of the evidence of coverage to
30 be used in this state, and any amendment thereto, shall
31 be subject to the filing and approval requirements of
32 subdivision (b), subsection (1) of this section, unless the
33 commissioner promulgates a regulation dispensing with
34 this requirement or unless it is subject to the jurisdiction
35 of the commissioner under the laws governing health
36 insurance or, hospital or medical service corporations,
37 in which event the filing and approval provisions of such
38 laws shall apply. To the extent, however, that such
39 provisions do not apply the requirements in subdivision
40 (c), subsection (1) of this section, shall be applicable.

41 (2) Such charges may be established in accordance
42 with actuarial principles: *Provided*, That premiums
43 shall not be excessive, inadequate, or unfairly discrim-
44 inatory. A certification by a qualified actuary, to the
45 appropriateness of the charges based on reasonable
46 assumptions shall accompany the filing along with
47 adequate supporting information. In determining
48 whether such charges are reasonable, the commissioner
49 shall consider whether such health maintenance organ-
50 ization has (a) made a vigorous, good faith effort to
51 control rates paid to health care providers;
52 (b) established a premium schedule, including copay-
53 ments, if any, which encourages enrollees to seek out
54 preventive health care services; and (c) has made a good
55 faith effort to secure arrangements whereby basic
56 services can be obtained by subscribers from all local
57 providers to the extent that such providers offer such
58 services.

59 (3) The commissioner shall within a reasonable period
60 approve any form if the requirements of subsection
61 (1) are met and any schedule of charges if the require-
62 ments of subsection (2) are met. It shall be unlawful to
63 issue such form or to use such schedule of charges until
64 approved. If the commissioner disapproves of such
65 filing, he shall notify the filer promptly. In the notice,
66 the commissioner shall specify the reasons for his
67 disapproval and the findings of fact and conclusions
68 which support his reasons. A hearing will be granted
69 by the commissioner within fifteen days after a request
70 in writing, by the person filing, has been received by
71 the commission. If the commissioner does not disapprove
72 any form or schedule of charges within sixty days of the
73 filing of such forms or charges, they shall be deemed
74 approved.

75 (4) The commissioner may require the submission of
76 whatever relevant information in addition to the
77 schedule of charges which he deems necessary in
78 determining whether to approve or disapprove a filing
79 made pursuant to this section.

80 (5) An enrollee shall be allowed to cancel a contract
81 with a health maintenance organization at any time for
82 any reason provided that a health maintenance organ-
83 ization may require that he or she give sixty days notice
84 of disenrollment to such organization.

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

Frederic L. Purser
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

David C. Smith
.....
Clerk of the Senate

Donald G. Hogg
.....
Clerk of the House of Delegates

Sam D. Tucker
.....
President of the Senate

Brooks
.....
Speaker of the House of Delegates

The within *is* approved this the *17th*
day of *April*, 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/89

Time 2:44 *PL*