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SB 438

FILED

2006 APR -3 P 4:16

SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2006

ENROLLED

SENATE BILL NO. 438

(By Senators MINARD AND FOSTER)

PASSED March 11, 2006

In Effect 90 days from Passage

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SECRETARY OF STATE

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Senate Bill No. 438

(BY SENATORS MINARD AND FOSTER)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §33-20-2 and §33-20-3 of the Code of West Virginia, as amended, all relating to title insurance; providing for review of title insurance rates by the Insurance Commissioner; setting forth criteria for rate review; allowing grouping into different rate classifications; requiring separate rate filings for commercial and non-commercial risks; and excluding certain expenses from inclusion in title insurance rates.

Be it enacted by the Legislature of West Virginia:

That §33-20-2 and §33-20-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-2. Scope of article.

- 1 (a) This article applies to fire, marine, casualty and
- 2 surety insurance on risks or operations in this state.

3 (b) This article does not apply:

4 (1) To reinsurance, other than joint reinsurance to the
5 extent stated in section eleven of this article;

6 (2) To life or accident and sickness insurance;

7 (3) To insurance of vessels or craft, their cargoes, marine
8 builders' risks, marine protection and indemnity or other
9 risks commonly insured under marine, as distinguished
10 from inland marine, insurance policies;

11 (4) To insurance against loss of or damage to aircraft,
12 including their accessories and equipment, or against
13 liability, other than workers' compensation and employer's
14 liability, arising out of the ownership, maintenance or use
15 of aircraft;

16 (5) To malpractice insurance insofar as the provisions of
17 this article directly conflict and thereby are supplanted by
18 article twenty-b of this chapter.

19 (c) If any kind of insurance, subdivision or combination
20 thereof, or type of coverage, is subject to both the provi-
21 sions of this article expressly applicable to casualty and
22 surety insurance and to those expressly applicable to fire
23 and marine insurance, the commissioner may apply to
24 filings made for such kind of insurance the provisions of
25 this article which are in his or her judgment most suitable.

§33-20-3. Ratemaking.

1 All rates shall be made in accordance with the following
2 provisions:

3 (a) Due consideration shall be given to past and prospec-
4 tive loss experience within and outside this state, to
5 catastrophe hazards, if any, to a reasonable margin for
6 underwriting profit and contingencies, to dividends,
7 savings or unabsorbed premium deposits allowed or
8 returned by insurers to their policyholders, members or
9 subscribers, to past and prospective expenses both coun-

10 trywide and those specially applicable to this state and to
11 all other relevant factors within and outside this state.

12 (b) Rates may not be excessive, inadequate or unfairly
13 discriminatory.

14 (c) Rates for casualty and surety insurance to which this
15 article applies shall also be subject to the following
16 provisions:

17 (1) The systems of expense provisions included in the
18 rates for use by any insurer or group of insurers may differ
19 from those of other insurers or groups of insurers to reflect
20 the requirements of the operating methods of any such
21 insurer or group with respect to any kind of insurance or
22 with respect to any subdivision or combination thereof for
23 which subdivision or combination separate expense
24 provisions are applicable.

25 (2) Risks shall be grouped by classifications and by
26 territorial areas for the establishment of rates and mini-
27 mum premiums. Classification of rates shall be modified
28 to produce rates for individual risks in a territorial area in
29 accordance with rating plans which establish standards
30 for measuring variations in hazards or expense provisions,
31 or both. Such standards may measure any differences
32 among risks that can be demonstrated to have a probable
33 effect upon losses or expenses: *Provided*, That such
34 standards shall include the establishment of at least seven
35 territorial rate areas within the state: *Provided, however*,
36 That such territorial rate established by any insurer or
37 group of insurers may differ from those of other insurers
38 or group of insurers.

39 (3) Due consideration shall be given to such factors as
40 expense, management, individual experience, underwrit-
41 ing judgment, degree or nature of hazard or any other
42 reasonable considerations, provided such factors apply to
43 all risks under the same or substantially the same circum-
44 stances or conditions.

45 (d) Rates for fire and marine insurance to which this
46 article applies shall also be subject to the following
47 provisions:

48 (1) Manual, minimum, class rates, rating schedules or
49 rating plans shall be made and adopted, except in the case
50 of specific inland marine rates on risks specially rated.

51 (2) Due consideration shall be given to the conflagration
52 hazard and in the case of fire insurance rates, consider-
53 ation shall be given to the experience of the fire insurance
54 business during a period of not less than the most recent
55 five-year period for which such experience is available.

56 (e) Rates for title insurance to which this article applies
57 shall also be subject to the following provisions:

58 (1) Title insurance rates shall be reasonable and ade-
59 quate for the class of risks to which they apply. Rates may
60 not be unfairly discriminatory between risks involving
61 essentially the same hazards and expense elements. The
62 rates may be fixed in an amount sufficient to furnish a
63 reasonable margin for profit after provisions to account
64 for: (i) Probable losses as indicated by experience within
65 and without this state; (ii) exposure to loss under policies;
66 (iii) allocations to reserves; (iv) costs participating insur-
67 ance; (v) operating costs; and (vi) other items of expense
68 fairly attributable to the operation of a title insurance
69 business.

70 (2) (A) Policies may be grouped into classes for the
71 establishment of rates. A title insurance policy that is
72 unusually hazardous to the title insurance company
73 because of an alleged defect or irregularity in the title
74 insured or because of uncertainty regarding the proper
75 interpretation or application of the law involved may be
76 classified separately according to the facts of each case.

77 (B) Title insurance companies shall file separate rate
78 schedules for commercial and non-commercial risks. The
79 Insurance Commissioner shall promulgate rules regarding

80 the requirements of this subsection which shall give due
81 consideration to the nature of commercial transactions
82 and the need for greater protections for consumers in non-
83 commercial transactions.

84 (3) Title insurance rates may not include charges for
85 abstracting, record searching, certificates regarding the
86 record title, escrow services, closing services and other
87 related services that may be offered or furnished or the
88 cost and expenses of examinations of titles.

89 (f) Except to the extent necessary to meet the provisions
90 of subdivisions (b) and (c) of this section, uniformity
91 among insurers in any matters within the scope of this
92 section is neither required nor prohibited.

93 (g) Rates made in accordance with this section may be
94 used subject to the provisions of this article.

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

Chandy White
.....
Chairman Senate Committee

R. Beery
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Edwards
.....
Clerk of the Senate

Bruce M. Sca
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

Robert R.
.....
Speaker House of Delegates

The within *is approved* this the *31st*
Day of *March*, 2006.

Paul Hancock
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 31 2006

Time 10:30am