WEST VIRGINIA LEGISLATURE
REGULAR SESSION 2006

ENROLLED

SENATE BILL NO. 438

(By Senators Minard and Foster)

PASSED March 14, 2006

In Effect 90 days from Passage
ENROLLED

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.
(b) This article does not apply:

1. To reinsurance, other than joint reinsurance to the extent stated in section eleven of this article;

2. To life or accident and sickness insurance;

3. To insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

4. To insurance against loss of or damage to aircraft, including their accessories and equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of aircraft;

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

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

§33-20-3. Ratemaking.

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

(a) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both coun-
trywide and those specially applicable to this state and to all other relevant factors within and outside this state.

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

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

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

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

(3) Due consideration shall be given to such factors as expense, management, individual experience, underwriting judgment, degree or nature of hazard or any other reasonable considerations, provided such factors apply to all risks under the same or substantially the same circumstances or conditions.
(d) Rates for fire and marine insurance to which this article applies shall also be subject to the following provisions:

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

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

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

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

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

(B) Title insurance companies shall file separate rate schedules for commercial and non-commercial risks. The Insurance Commissioner shall promulgate rules regarding
the requirements of this subsection which shall give due
consideration to the nature of commercial transactions
and the need for greater protections for consumers in non-
commercial transactions.

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

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

(g) Rates made in accordance with this section may be
used subject to the provisions of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor