Enrolled
Committee Substitute for
Senate Bill 495

SENATOR AZINGER, original sponsor

[Passed March 10, 2018; in effect 90 days from passage]
WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

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for

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SENATOR AZINGER, original sponsor

[Passed March 10, 2018; in effect 90 days from passage]
AN ACT to amend and reenact §33-20-4 of the Code of West Virginia, 1931, as amended, relating to commercial insurance rates; and designating specific insurance coverages which are exempt from the requirements of filing rates with the insurance commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-4. Rate filings.

(a) (1) Every insurer shall file with the commissioner every manual of classifications, territorial rate areas established pursuant to §33-20-3(c)(2) of this code, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use for casualty insurance to which this article applies.

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

(3) Subject to §33-20-4(a)(4) and §33-20-4(a)(5) of this code and the requirements for ratemaking in §33-20-3 of this code, the following commercial lines insurance coverages are exempt from rate-filing requirements under this article with respect to every manual, minimum, class rate, rating schedule, or rating plans, and every other rating rule and modification of any of the foregoing, whether the insurance coverage is endorsed to, or otherwise made part of, another kind of insurance policy or sold as a stand-alone policy:

(A) Surety and fidelity;

(B) Commercial inland marine;

(C) Boiler and machinery;

(D) Environmental impairment or pollution liability;
21 (E) Kidnap and ransom;
22 (F) Political risk or expropriation;
23 (G) Excess and umbrella liability;
24 (H) Directors’ and officers’ liability;
25 (I) Fiduciary liability;
26 (J) Employment practices liability;
27 (K) Errors and omission other than medical malpractice;
28 (L) Professional liability other than medical malpractice;
29 (M) Media liability;
30 (N) Commercial lines travel risk, including accidental death and dismemberment;
31 (O) Product liability, product recall, and completed operations;
32 (P) Cybersecurity, including first and third-party commercial lines coverage for losses
33 arising out of or relating to data privacy breach, network security, computer viruses, and similar
34 exposures;
35 (Q) Highly protected commercial property;
36 (R) All commercial lines insurance coverages not excluded under §33-20-4(a)(4) of this
37 code when purchased by a commercial policyholder with aggregate annual commercial insurance
38 premiums of $25,000 or more excluding premiums for the types of insurance excluded under §33-
39 20-4(a)(4) of this code; and
40 (S) Any other commercial lines insurance coverage or risk that the commissioner may, by
41 order, exempt from rate filing and approval requirements in order to promote enhanced
42 competition or to more effectively use the resources of the department that might otherwise be
43 used to review commercial lines filings or because the commissioner does not consider the filing
44 and approval requirements to be necessary or desirable for the protection of the public.
45 (4) The exemptions from rate filing requirements in §33-20-4(a)(3) of this code are not
46 applicable to the following kinds of commercial insurance:
(A) Workers’ compensation;

(B) Medical malpractice liability;

(C) Nonfleet commercial automobile liability policies covering four or fewer vehicles;

(D) Any coverage issued by an assigned risk or residual market plan pursuant to §33-20-15 of this code, §33-20A-1 et seq. of this code, or the Mine Subsidence Insurance Fund created pursuant to §33-30-1 et seq. of this code.

(5) The commissioner may temporarily reinstate, for a period of no longer than one year, the requirement for rate filings for a specific insurance coverage set forth in §33-20-4(a)(3) of this code if, after a hearing, the commissioner makes a finding of fact that a reasonable degree of competition does not exist for that specific type of insurance coverage. The finding of fact by the commissioner must specify the relevant tests used to determine whether a lack of a reasonable degree of competition exists and the results thereof. In the absence of such findings of fact by the commissioner, a competitive market is presumed to exist.

(b) Every filing shall state the proposed effective date and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this article, he or she shall require the insurer to furnish the information upon which it supports the filing and in that event the waiting period shall commence as of the date the information is furnished. The information furnished in support of a filing may include: (1) The experience or judgment of the insurer or rating organization making the filing; (2) the experience or judgment of the insurer or rating organization in the territorial rate areas established by §33-20-3(c)(2) of this code; (3) its interpretation of any statistical data it relies upon; (4) the experience of other insurers or rating organizations; or (5) any other relevant factors. A filing and any supporting information is open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his or her position concerning the filing. Any person or organization may
file with the commissioner a signed statement declaring and supporting his or her or its position concerning the filing. Upon receipt of the statement prior to the effective date of the filing, the commissioner shall mail or deliver a copy of the statement to the filer, which may file a reply as it may desire to make. This section is not applicable to any memorandum or statement of any kind by any employee of the commissioner.

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

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

(e) Subject to the exceptions specified in §33-20-4(f), §33-20-4(g) and §33-20-4(h) of this code, each filing shall be on file for a waiting period of 60 days before it becomes effective. Upon written application by an insurer or rating organization, the commissioner may authorize a filing which he or she has reviewed to become effective before the expiration of the waiting period. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period.

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

(g) Specific inland marine rates on risks specially rated by a rating organization shall become effective when filed and shall be deemed to meet the requirements of this article until the commissioner reviews the filing and so long thereafter as the filing remains in effect.
(h) Except as provided in §33-20-4(a)(3) of this code, rates for commercial lines property
and casualty risks must be filed with the commissioner and the filings need not be approved by
the commissioner. The commissioner may request additional information to ensure compliance
with applicable statutory standards, but if the commissioner does not disapprove the filing within
the initial 30-day period after receipt, the rate filing will become effective upon first usage after
filing: Provided, That the commissioner may at any time thereafter, after notice and for cause
shown, disapprove any rate filing.

(i) Under legislative rules, the commissioner may, by written order, suspend or modify the
requirement of filing as to any kind of insurance, subdivision, or combination thereof, or as to
classes of risks, the rates for which cannot practicably be filed before they are used. These orders
and rules shall be made known to insurers and rating organizations affected thereby. The
commissioner may make any examination he or she may consider advisable to ascertain whether
any rates affected by an order meet the standards set forth in §33-20-3(b) of this code.

(j) Upon the written application of the insured, stating his or her reasons therefor, filed with
and approved by the commissioner, a rate in excess of that provided by a filing otherwise
applicable may be used on any specific risks.

(k) No insurer shall make or issue a contract or policy except in accordance with the filings
which are in effect for that insurer as provided in this article. This subsection does not apply to
contracts or policies for risks as to which filings are not required.

(l) In instances when an insurer files a request for an increase of automobile liability
insurance rates in the amount of 15 percent or more, the Insurance Commissioner shall provide
notice of the increase with the Office of the Secretary of State to be filed in the State Register and
shall provide interested persons the opportunity to comment on the request up to the time the
commissioner approves or disapproves the rate increase.

(m) For purposes of this section, “commercial” means commercial lines as defined in §33-
6-8(e)(2) of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Vice-Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill was approved this the __________ Day of __________ 2018.

Governor
PRESENTED TO THE GOVERNOR

MAR 21 2018

Time 11:57 a.m.