

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2439

BY DELEGATES WESTFALL, WHITE, B. AND FRICH

[Introduced February 14, 2017; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §33-11-4 of the Code of West Virginia, 1931, as amended, relating
 2 to insurance and unfair claim settlement practices; and providing that any civil or
 3 administrative action authorized or contemplated by this section may only be maintained
 4 against an insurer and not against any individual.

Be it enacted by the Legislature of West Virginia:

1 That §33-11-4 of the Code of West Virginia, 1931, as amended, be amended and
 2 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 defined as unfair methods of competition and unfair or deceptive acts or
 2 practices in the business of insurance:

3 (1) *Misrepresentation and false advertising of insurance policies.* -- No person shall may
 4 make, issue, circulate, or cause to be made, issued or circulated, any estimate, circular,
 5 statement, sales presentation, omission or comparison which:

6 (a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;
 7 or

8 (b) Misrepresents the dividends or share of the surplus to be received on any insurance
 9 policy; or

10 (c) Makes any false or misleading statements as to the dividends or share of surplus
 11 previously paid on any insurance policy; or

12 (d) Is misleading or is a misrepresentation as to the financial condition of any person, or
 13 as to the legal reserve system upon which any life insurer operates; or

14 (e) Uses any name or title of any insurance policy or class of insurance policies
 15 misrepresenting the true nature thereof; or

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

18 (g) Is a misrepresentation for the purpose of effecting a pledge or assignment of or
19 effecting a loan against any insurance policy; or

20 (h) Misrepresents any insurance policy as being shares of stock.

21 (2) *False information and advertising generally.* -- No person shall ~~shall~~ may make, publish,
22 disseminate, circulate or place before the public, or cause, directly or indirectly, to be made,
23 published, disseminated, circulated or placed before the public, in a newspaper, magazine or
24 other publication, or in the form of a notice, circular, pamphlet, letter or poster or over any radio
25 or television station, or in any other way, an advertisement, announcement or statement
26 containing any assertion, representation or statement with respect to the business of insurance
27 or with respect to any person in the conduct of his or her insurance business, which is untrue,
28 deceptive or misleading.

29 (3) *Defamation.* -- No person shall ~~shall~~ may make, publish, disseminate or circulate, directly or
30 indirectly, or aid, abet or encourage the making, publishing, disseminating or circulating of any
31 oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously
32 critical of or derogatory to the financial condition of any person and which is calculated to injure
33 the person.

34 (4) *Boycott, coercion and intimidation.* -- No person shall ~~shall~~ may enter into any agreement to
35 commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting
36 in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

37 (5) *False statements and entries.* -- (a) No person shall ~~shall~~ may knowingly file with any
38 supervisory or other public official, or knowingly make, publish, disseminate, circulate or deliver
39 to any person, or place before the public, or knowingly cause directly or indirectly, to be made,
40 published, disseminated, circulated, delivered to any person, or placed before the public, any
41 false material statement of fact as to the financial condition of a person.

42 (b) No person shall ~~shall~~ may knowingly make any false entry of a material fact in any book,
43 report or statement of any person or knowingly omit to make a true entry of any material fact

44 pertaining to the business of any person in any book, report or statement of such person.

45 (6) *Stock operations and advisory board contracts.* -- No person ~~shall~~ may issue or deliver
46 or permit agents, officers or employees to issue or deliver, agency company stock or other capital
47 stock, or benefit certificates or shares in any common-law corporation, or securities or any special
48 or advisory board contracts or other contracts of any kind promising returns and profits as an
49 inducement to insurance.

50 (7) *Unfair discrimination.* -- (a) No person ~~shall~~ may make or permit any unfair
51 discrimination between individuals of the same class and equal expectation of life in the rates
52 charged for any contract of life insurance or of life annuity or in the dividends or other benefits
53 payable thereon, or in any other of the terms and conditions of the contract.

54 (b) No person ~~shall~~ may make or permit any unfair discrimination between individuals of
55 the same class and of essentially the same hazard in the amount of premium policy fees, or rates
56 charged for any policy or contract of accident and sickness insurance or in the benefits payable
57 thereunder, or in any of the terms or conditions of the contract, or in any other manner whatever.

58 (c) As to kinds of insurance other than life and accident and sickness, no person ~~shall~~ may
59 make or permit any unfair discrimination in favor of particular persons, or between insureds or
60 subjects of insurance having substantially like insuring, risk and exposure factors or expense
61 elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium
62 charge therefor. This paragraph ~~shall~~ does not apply to any premium or premium rate in effect
63 pursuant to article twenty of this chapter.

64 (8) *Rebates.* -- (a) Except as otherwise expressly provided by law, no person ~~shall~~ may
65 knowingly permit or offer to make or make any contract of life insurance, life annuity, or accident
66 and sickness insurance, or agreement to any contract other than as plainly expressed in the
67 insurance contract issued thereon, or pay or allow or give or offer to pay, allow or give, directly or
68 indirectly, as inducement to any insurance or annuity, any rebate of premiums payable on the
69 contract, or any special favor or advantage in the dividends or other benefits thereon, or any

70 valuable consideration or inducement whatever not specified in the contract; or give or sell, or
71 purchase or offer to give, sell or purchase as inducement to any insurance contract or annuity or
72 in connection therewith, any stocks, bonds or other securities of any insurance company or other
73 corporation, association or partnership, or any dividends or profits accrued thereon, or anything
74 of value whatsoever not specified in the contract.

75 (b) Nothing in subdivision (7) or paragraph (a) of subdivision (8) of this section ~~shall~~ may
76 be construed as including within the definition of unfair discrimination or rebates any of the
77 following practices:

78 (i) In the case of any contract of life insurance or life annuity, paying bonuses to
79 policyholders or otherwise abating their premiums, in whole or in part, out of surplus accumulated
80 from nonparticipating insurance: *Provided*, That any such bonuses or abatement of premiums
81 shall be fair and equitable to policyholders and for the best interests of the insurer and its
82 policyholders;

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

87 (iii) Readjustment of the rate of premium for a group insurance policy based on the loss
88 or expense thereunder, at the end of the first or any subsequent policy year of insurance
89 thereunder, which may be made retroactive only for such policy year;

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

92 (c) With respect to insurance other than life, accident and sickness, ocean marine or
93 marine protection and indemnity insurance, no person ~~shall~~ may knowingly charge, demand or
94 receive a premium for the insurance except in accordance with an applicable filing on file with the
95 commissioner. No person ~~shall~~ may pay, allow or give, directly or indirectly, either as an

96 inducement to insurance or after insurance has been effected, any rebate, discount, abatement,
97 credit or reduction of the premium named in a policy of insurance, or any special favor or
98 advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or
99 inducement whatever, not specified in the policy of insurance, except to the extent provided for in
100 an applicable filing. No insured named in a policy of insurance, nor any relative, representative or
101 employee of the insured ~~shall~~ may knowingly receive or accept directly or indirectly, any rebate,
102 discount, abatement, credit or reduction of premium, or any special favor or advantage or valuable
103 consideration or inducement. Nothing in this section ~~shall~~ may be construed as prohibiting the
104 payment of commissions or other compensation to duly licensed agents and brokers, nor as
105 prohibiting any insurer from allowing or returning to its participating policyholders, members or
106 subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word
107 "insurance" includes suretyship and the word "policy" includes bond.

108 (9) *Unfair claim settlement practices.* -- No person ~~shall~~ may commit or perform with such
109 frequency to indicate a general business practice any of the following:

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

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

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

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

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

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

122 (g) Compelling insureds to institute litigation to recover amounts due under an insurance
123 policy by offering substantially less than the amounts ultimately recovered in actions brought by
124 the insureds, when the insureds have made claims for amounts reasonably similar to the amounts
125 ultimately recovered;

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

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

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

133 (k) Making known to insureds or claimants a policy of appealing from arbitration awards in
134 favor of insureds or claimants for the purpose of compelling them to accept settlements or
135 compromises less than the amount awarded in arbitration;

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

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

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

146 (o) Failing to notify the first party claimant and the provider(s) of services covered under
147 accident and sickness insurance and hospital and medical service corporation insurance policies

148 whether the claim has been accepted or denied and if denied, the reasons therefor, within fifteen
149 calendar days from the filing of the proof of loss: *Provided*, That should benefits due the claimant
150 be assigned, notice to the claimant shall not be required: *Provided, however*, That should the
151 benefits be payable directly to the claimant, notice to the health care provider shall not be required.
152 If the insurer needs more time to investigate the claim, it shall so notify the first party claimant in
153 writing within fifteen calendar days from the date of the initial notification and every thirty calendar
154 days, thereafter; but in no instance ~~shall~~ may a claim remain unsettled and unpaid for more than
155 ninety calendar days from the first party claimant's filing of the proof of loss unless, as determined
156 by the Insurance Commissioner: (1) There is a legitimate dispute as to coverage, liability or
157 damages; or (2) the claimant has fraudulently caused or contributed to the loss. ~~In the event that~~
158 If the insurer fails to pay the claim in full within ninety calendar days from the claimant's filing of
159 the proof of loss, except for exemptions provided above, there shall be assessed against the
160 insurer and paid to the insured a penalty which will be in addition to the amount of the claim and
161 assessed as interest on the claim at the then current prime rate plus one percent. Any penalty
162 paid by an insurer pursuant to this section ~~shall~~ may not be a consideration in any rate filing made
163 by the insurer.

164 (p) Notwithstanding any other provision of this code to the contrary, any civil or
165 administrative action authorized or contemplated by this section, or seeking to address or recover
166 for alleged violations of this section, may be brought or maintained only against an insurer and
167 not against any individual.

168 (10) *Failure to maintain complaint handling procedures.* -- No insurer ~~shall~~ may fail to
169 maintain a complete record of all the complaints which it has received since the date of its last
170 examination under section nine, article two of this chapter. This record shall indicate the total
171 number of complaints, their classification by line of insurance, the nature of each complaint, the
172 disposition of these complaints, and the time it took to process each complaint. For purposes of
173 this subsection, "complaint" ~~shall~~ means any written communication primarily expressing a

174 grievance.

175 (11) *Misrepresentation in insurance applications.* -- No person ~~shall~~ may make false or
176 fraudulent statements or representations on or relative to an application for an insurance policy,
177 for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent,
178 broker or individual.

179 (12) *Failure to maintain privacy of consumer financial and health information.* -- Any
180 licensee who violates any provision of the commissioner's rule relating to the privacy of consumer
181 financial and health information ~~shall be deemed~~ is considered to have violated the provisions of
182 this article: *Provided*, That any licensee who complies with the provisions of this subsection, a
183 commissioner's rule, or a court order ~~shall~~ may not be ~~deemed~~ considered to be in violation of
184 any other provisions of sections three and four of this article by their compliance with this
185 subsection, the rule or court order. For purposes of this subsection, "licensee" means all licensed
186 insurers, producers and other persons licensed or required to be licensed, or authorized or
187 required to be authorized, or registered or required to be registered pursuant to this chapter.

NOTE: The purpose of this bill is to prohibit civil or administrative actions for unfair claim settlement practices against individuals and to require that these actions may only be maintained against insurance companies.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.