

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4342**

BY DELEGATES WESTFALL, STATLER, WHITE, MAYNARD

AND HARTMAN

[Introduced January 29, 2018; Referred  
to the Committee on Banking and Insurance then the  
Judiciary. ]

1 A BILL to amend and reenact §33-20-4 of the Code of West Virginia, 1931, as amended, relating  
 2 to commercial insurance rates; and designating specific insurance coverages which are  
 3 exempt from rate filing requirements under this article.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 20. RATES AND RATING ORGANIZATIONS.**

**§33-20-4. Rate filings.**

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

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

11 (3) Subject to the provisions of subdivisions (4) and (5), subsection (a) of this section, the  
 12 following insurance coverages are exempt from rate filing requirements under this article with  
 13 respect to every manual, minimum, class rate, rating schedule or rating plans, and every other  
 14 rating rule and every modification of any of the foregoing, whether the insurance coverage is  
 15 endorsed to, or otherwise made part of, another kind of insurance policy or sold as a stand-alone  
 16 policy:

17 (A) Surety and fidelity;

18 (B) Commercial inland marine;

19 (C) Boiler and machinery;

20 (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 subdivision (4),  
37 subsection (a) of this section when purchased by a commercial policyholder with aggregate  
38 annual commercial insurance premiums of \$25,000 or more excluding premiums for the types of  
39 insurance excluded under subdivision (4), subsection (a) of this section; 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 subdivision (3), subsection (a) of this  
46 section are not applicable to the following kinds of commercial insurance:

- 47           (A) Workers' compensation;  
48           (B) Medical malpractice liability;  
49           (C) Nonfleet commercial automobile liability (policies covering four or fewer vehicles);  
50           (D) Any coverage issued by an assigned risk or residual market plan pursuant to §33-20-  
51 15, §33-20A-1 et seq. of this code, or the Mine Subsidence Insurance Fund created pursuant to  
52 §33-30-1 et seq. of this code.

53           (5) The commissioner may temporarily reinstate, for a period of no longer than one year,  
54 the requirement for rate filings for a specific insurance coverage specified under subdivision (3),  
55 subsection (a) of this section if, after a hearing, the commissioner makes a finding of fact that a  
56 reasonable degree of competition does not exist for that specific type of insurance coverage. The  
57 finding of fact by the commissioner must specify the relevant tests used to determine whether a  
58 lack of a reasonable degree of competition exists and the results thereof. In the absence of such  
59 specific findings of fact by the commissioner, a competitive market is presumed to exist.

60           (b) Every filing shall state the proposed effective date and shall indicate the character and  
61 extent of the coverage contemplated. When a filing is not accompanied by the information upon  
62 which the insurer supports the filing and the commissioner does not have sufficient information to  
63 determine whether the filing meets the requirements of this article, he or she shall require the  
64 insurer to furnish the information upon which it supports the filing and in that event the waiting  
65 period shall commence as of the date the information is furnished. The information furnished in  
66 support of a filing may include: (1) The experience or judgment of the insurer or rating organization  
67 making the filing; (2) the experience or judgment of the insurer or rating organization in the  
68 territorial rate areas established by subdivision (2), subsection (c), section three of this article; (3)  
69 its interpretation of any statistical data it relies upon; (4) the experience of other insurers or rating  
70 organizations; or (5) any other relevant factors. A filing and any supporting information is open to  
71 public inspection as soon as the filing is received by the commissioner. Any interested party may  
72 file a brief with the commissioner supporting his or her position concerning the filing. Any person

73 or organization may file with the commissioner a signed statement declaring and supporting his  
74 or her or its position concerning the filing. Upon receipt of the statement prior to the effective date  
75 of the filing, the commissioner shall mail or deliver a copy of the statement to the filer, which may  
76 file a reply as it may desire to make. This section is not applicable to any memorandum or  
77 statement of any kind by any employee of the commissioner.

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

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

85 (e) Subject to the exceptions specified in subsections (f), (g) and (h) of this section, each  
86 filing shall be on file for a waiting period of sixty days before it becomes effective. Upon written  
87 application by an insurer or rating organization, the commissioner may authorize a filing which he  
88 or she has reviewed to become effective before the expiration of the waiting period. A filing shall  
89 be deemed to meet the requirements of this article unless disapproved by the commissioner within  
90 the waiting period.

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

95 (g) Specific inland marine rates on risks specially rated by a rating organization shall  
96 become effective when filed and shall be ~~deemed~~ considered to meet the requirements of this  
97 article until the commissioner reviews the filing and so long thereafter as the filing remains in  
98 effect.

99           (h) Except as provided in subdivision (3), subsection (a) of this section, rates for  
100 commercial lines property and casualty risks must be filed with the commissioner and the filings  
101 need not be approved by the commissioner. The commissioner may request additional  
102 information to ensure compliance with applicable statutory standards, but if the commissioner  
103 does not disapprove the filing within the initial thirty-day period after receipt, the rate filing will  
104 become effective upon first usage after filing: *Provided,* That the commissioner may at any time  
105 thereafter, after notice and for cause shown, disapprove any rate filing.

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

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

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

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

124           (m) For purposes of this section, "commercial" means commercial lines as defined in §33-

125 6-8(e)(2) of this code.

NOTE: The purpose of this bill is to exempt certain specialty commercial lines from rate filing requirements under this article.

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