

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 495

BY SENATOR AZINGER

[Originating in the Committee on Banking and
Insurance; Reported on February 13, 2018]

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.

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

- 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 of this code, §33-20A-1 et seq. of this code, or the Mine Subsidence Insurance Fund created
- 52 pursuant to §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 set forth in §33-20-4(a)(3) of this

55 code if, after a hearing, the commissioner makes a finding of fact that a reasonable degree of

56 competition does not exist for that specific type of insurance coverage. The finding of fact by the

57 commissioner must specify the relevant tests used to determine whether a lack of a reasonable

58 degree of competition exists and the results thereof. In the absence of such findings of fact by the

59 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 §33-20-3(c)(2) of this code; (3) its interpretation of any

69 statistical data it relies upon; (4) the experience of other insurers or rating organizations; or (5)

70 any other relevant factors. A filing and any supporting information is open to public inspection as

71 soon as the filing is received by the commissioner. Any interested party may file a brief with the

72 commissioner supporting his or her position concerning the filing. Any person or organization may

73 file with the commissioner a signed statement declaring and supporting his or her or its position
74 concerning the filing. Upon receipt of the statement prior to the effective date of the filing, the
75 commissioner shall mail or deliver a copy of the statement to the filer, which may file a reply as it
76 may desire to make. This section is not applicable to any memorandum or statement of any kind
77 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 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 §33-20-4(f), §33-20-4(g), and §33-20-4(h) of this
86 code, each filing shall be on file for a waiting period of 60 days before it becomes effective. Upon
87 written application by an insurer or rating organization, the commissioner may authorize a filing
88 which he or she has reviewed to become effective before the expiration of the waiting period. A
89 filing shall be deemed to meet the requirements of this article unless disapproved by the
90 commissioner within 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
93 become 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 to meet the requirements of this article until the
97 commissioner reviews the filing and so long thereafter as the filing remains in effect.

98 (h) Except as provided in §33-20-4(a)(3) of this code, rates for commercial lines property
99 and casualty risks must be filed with the commissioner and the filings need not be approved by
100 the commissioner. The commissioner may request additional information to ensure compliance
101 with applicable statutory standards, but if the commissioner does not disapprove the filing within
102 the initial 30-day period after receipt, the rate filing will become effective upon first usage after
103 filing: *Provided*, That the commissioner may at any time thereafter, after notice and for cause
104 shown, disapprove any rate filing.

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

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

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

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

122 (m) For purposes of this section, "commercial" means commercial lines as defined in §33-
123 6-8(e)(2) of this code.