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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4469**

(By Delegate Beane)



Passed March 9, 2002

In Effect Ninety Days from Passage

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## H. B. 4469

(BY DELEGATE BEANE)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article eleven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making a violation of the insurance commissioner's rule regarding a consumer's financial and health information a violation of the unfair trade practices.

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

That section four, article eleven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and 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  
2 and unfair or deceptive acts or practices in the business of  
3 insurance:

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

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

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

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

15       (d) Is misleading or is a misrepresentation as to the finan-  
16 cial condition of any person, or as to the legal reserve system  
17 upon which any life insurer operates; or

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

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

23       (g) Is a misrepresentation for the purpose of effecting a  
24 pledge or assignment of or effecting a loan against any insur-  
25 ance policy; or

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

28       (2) *False information and advertising generally.* — No  
29 person shall make, publish, disseminate, circulate or place  
30 before the public, or cause, directly or indirectly, to be made,  
31 published, disseminated, circulated or placed before the public,  
32 in a newspaper, magazine or other publication, or in the form of  
33 a notice, circular, pamphlet, letter or poster or over any radio or  
34 television station, or in any other way, an advertisement,  
35 announcement or statement containing any assertion, represen-  
36 tation or statement with respect to the business of insurance or  
37 with respect to any person in the conduct of his insurance  
38 business, which is untrue, deceptive or misleading.

39       (3) *Defamation.* — No person shall make, publish, dissemi-  
40 nate or circulate, directly or indirectly, or aid, abet or encourage  
41 the making, publishing, disseminating or circulating of any oral  
42 or written statement or any pamphlet, circular, article or  
43 literature which is false, or maliciously critical of or derogatory  
44 to the financial condition of any person and which is calculated  
45 to injure the person.

46       (4) *Boycott, coercion and intimidation.* — No person shall  
47 enter into any agreement to commit, or by any concerted action  
48 commit, any act of boycott, coercion or intimidation resulting  
49 in or tending to result in unreasonable restraint of, or monopoly  
50 in, the business of insurance.

51       (5) *False statements and entries.* — (a) No person shall  
52 knowingly file with any supervisory or other public official, or  
53 knowingly make, publish, disseminate, circulate or deliver to  
54 any person, or place before the public, or knowingly cause  
55 directly or indirectly, to be made, published, disseminated,  
56 circulated, delivered to any person, or placed before the public,  
57 any false material statement of fact as to the financial condition  
58 of a person.

59 (b) No person shall knowingly make any false entry of a  
60 material fact in any book, report or statement of any person or  
61 knowingly omit to make a true entry of any material fact  
62 pertaining to the business of any person in any book, report or  
63 statement of such person.

64 (6) *Stock operations and advisory board contracts.* — No  
65 person shall issue or deliver or permit agents, officers or  
66 employees to issue or deliver, agency company stock or other  
67 capital stock, or benefit certificates or shares in any com-  
68 mon-law corporation, or securities or any special or advisory  
69 board contracts or other contracts of any kind promising returns  
70 and profits as an inducement to insurance.

71 (7) *Unfair discrimination.* — (a) No person shall make or  
72 permit any unfair discrimination between individuals of the  
73 same class and equal expectation of life in the rates charged for  
74 any contract of life insurance or of life annuity or in the  
75 dividends or other benefits payable thereon, or in any other of  
76 the terms and conditions of the contract.

77 (b) No person shall make or permit any unfair discrimina-  
78 tion between individuals of the same class and of essentially the  
79 same hazard in the amount of premium policy fees, or rates  
80 charged for any policy or contract of accident and sickness  
81 insurance or in the benefits payable thereunder, or in any of the  
82 terms or conditions of the contract, or in any other manner  
83 whatever.

84 (c) As to kinds of insurance other than life and accident and  
85 sickness, no person shall make or permit any unfair discrimina-  
86 tion in favor of particular persons, or between insureds or  
87 subjects of insurance having substantially like insuring, risk and  
88 exposure factors or expense elements, in the terms or conditions  
89 of any insurance contract, or in the rate or amount of premium  
90 charge therefor. This paragraph shall not apply as to any

91 premium or premium rate in effect pursuant to article twenty of  
92 this chapter.

93 (8) *Rebates.* — (a) Except as otherwise expressly provided  
94 by law, no person shall knowingly permit or offer to make or  
95 make any contract of life insurance, life annuity, or accident  
96 and sickness insurance, or agreement as to any contract other  
97 than as plainly expressed in the insurance contract issued  
98 thereon, or pay or allow or give or offer to pay, allow or give,  
99 directly or indirectly, as inducement to any insurance or  
100 annuity, any rebate of premiums payable on the contract, or any  
101 special favor or advantage in the dividends or other benefits  
102 thereon, or any valuable consideration or inducement whatever  
103 not specified in the contract; or give or sell, or purchase or offer  
104 to give, sell or purchase as inducement to any insurance  
105 contract or annuity or in connection therewith, any stocks,  
106 bonds or other securities of any insurance company or other  
107 corporation, association or partnership, or any dividends or  
108 profits accrued thereon, or anything of value whatsoever not  
109 specified in the contract.

110 (b) Nothing in subdivision seven or paragraph (a) of  
111 subdivision eight of this section shall be construed as including  
112 within the definition of unfair discrimination or rebates any of  
113 the following practices:

114 (i) In the case of any contract of life insurance or life  
115 annuity, paying bonuses to policyholders or otherwise abating  
116 their premiums in whole or in part out of surplus accumulated  
117 from nonparticipating insurance: *Provided*, That any such  
118 bonuses or abatement of premiums shall be fair and equitable  
119 to policyholders and for the best interests of the insurer and its  
120 policyholders;

121 (ii) In the case of life insurance policies issued on the  
122 industrial debit plan, making allowance to policyholders who

123 have continuously for a specified period made premium  
124 payments directly to an office of the insurer in an amount which  
125 fairly represents the saving in collection expenses;

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

131 (iv) Issuing life or accident and sickness policies on a salary  
132 savings or payroll deduction plan at a reduced rate commensu-  
133 rate with the savings made by the use of the plan.

134 (c) With respect to insurance other than life, accident and  
135 sickness, ocean marine or marine protection and indemnity  
136 insurance, no person shall knowingly charge, demand or receive  
137 a premium for the insurance except in accordance with an  
138 applicable filing on file with the commissioner. No person shall  
139 pay, allow or give, directly or indirectly, either as an induce-  
140 ment to insurance or after insurance has been effected, any  
141 rebate, discount, abatement, credit or reduction of the premium  
142 named in a policy of insurance, or any special favor or advan-  
143 tage in the dividends or other benefits to accrue thereon, or any  
144 valuable consideration or inducement whatever, not specified  
145 in the policy of insurance, except to the extent provided for in  
146 an applicable filing. No insured named in a policy of insurance,  
147 nor any relative, representative or employee of the insured shall  
148 knowingly receive or accept directly or indirectly, any rebate,  
149 discount, abatement, credit or reduction of premium, or any  
150 special favor or advantage or valuable consideration or induce-  
151 ment. Nothing in this section shall be construed as prohibiting  
152 the payment of commissions or other compensation to duly  
153 licensed agents and brokers, nor as prohibiting any insurer from  
154 allowing or returning to its participating policyholders, mem-  
155 bers or subscribers, dividends, savings or unabsorbed premium

156 deposits. As used in this section the word “insurance” includes  
157 suretyship and the word “policy” includes bond.

158 (9) *Unfair claim settlement practices.* — No person shall  
159 commit or perform with such frequency as to indicate a general  
160 business practice any of the following:

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

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

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

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

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

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

177 (g) Compelling insureds to institute litigation to recover  
178 amounts due under an insurance policy by offering substantially  
179 less than the amounts ultimately recovered in actions brought  
180 by the insureds, when the insureds have made claims for  
181 amounts reasonably similar to the amounts ultimately recov-  
182 ered;

183 (h) Attempting to settle a claim for less than the amount to  
184 which a reasonable man would have believed he was entitled by  
185 reference to written or printed advertising material accompany-  
186 ing or made part of an application;

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

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

193 (k) Making known to insureds or claimants a policy of  
194 appealing from arbitration awards in favor of insureds or  
195 claimants for the purpose of compelling them to accept settle-  
196 ments or compromises less than the amount awarded in  
197 arbitration;

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

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

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

211 (o) Failing to notify the first party claimant and the pro-  
212 vider(s) of services covered under accident and sickness

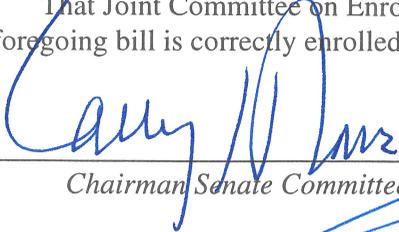
213 insurance and hospital and medical service corporation insur-  
214 ance policies whether the claim has been accepted or denied  
215 and if denied, the reasons therefor, within fifteen calendar days  
216 from the filing of the proof of loss: *Provided*, That should  
217 benefits due the claimant be assigned, notice to the claimant  
218 shall not be required: *Provided, however*, That should the  
219 benefits be payable directly to the claimant, notice to the health  
220 care provider shall not be required. If the insurer needs more  
221 time to investigate the claim, it shall so notify the first party  
222 claimant in writing within fifteen calendar days from the date  
223 of the initial notification and every thirty calendar days,  
224 thereafter; but in no instance shall a claim remain unsettled and  
225 unpaid for more than ninety calendar days from the first party  
226 claimant's filing of the proof of loss unless, as determined by  
227 the insurance commissioner, (1) there is a legitimate dispute as  
228 to coverage, liability or damages; or (2) the claimant has  
229 fraudulently caused or contributed to the loss. In the event that  
230 the insurer fails to pay the claim in full within ninety calendar  
231 days from the claimant's filing of the proof of loss, except for  
232 exemptions provided above, there shall be assessed against the  
233 insurer and paid to the insured a penalty which will be in  
234 addition to the amount of the claim and assessed as interest on  
235 the claim at the then current prime rate plus one percent. Any  
236 penalty paid by an insurer pursuant to this section shall not be  
237 a consideration in any rate filing made by the insurer.

238 (10) *Failure to maintain complaint handling procedures.* —  
239 No insurer shall fail to maintain a complete record of all the  
240 complaints which it has received since the date of its last  
241 examination under section nine, article two of this chapter. This  
242 record shall indicate the total number of complaints, their  
243 classification by line of insurance, the nature of each complaint,  
244 the disposition of these complaints, and the time it took to  
245 process each complaint. For purposes of this subsection,  
246 "complaint" shall mean any written communication primarily  
247 expressing a grievance.

248       (11) *Misrepresentation in insurance applications.* — No  
249 person shall make false or fraudulent statements or representa-  
250 tions on or relative to an application for an insurance policy, for  
251 the purpose of obtaining a fee, commission, money or other  
252 benefit from any insurer, agent, broker or individual.

253       (12) *Failure to maintain privacy of consumer financial and*  
254 *health information.* — Any licensee who violates any provision  
255 of the commissioner’s rule relating to the privacy of consumer  
256 financial and health information shall be deemed to have  
257 violated the provisions of this article: *Provided,* That any  
258 licensee who complies with the provisions of this subsection, a  
259 commissioner’s rule, or a court order shall not be deemed to be  
260 in violation of any other provisions of sections three and four of  
261 this article by their compliance with this subsection, the rule or  
262 court order. For purposes of this subsection, “licensee” means  
263 all licensed insurers, producers and other persons licensed or  
264 required to be licensed, or authorized or required to be autho-  
265 rized, or registered or required to be registered pursuant to this  
266 chapter.

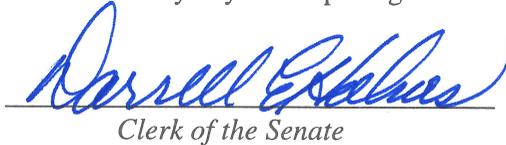
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

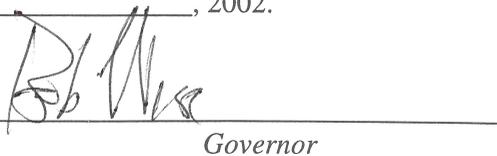
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 3rd  
day of April, 2002.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/02

Time 10:15 AM