

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4499

**FISCAL
NOTE**

BY DELEGATES LANE, FRICH, WHITE AND WESTFALL

[Introduced February 12, 2018; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to repeal §33-20-4a of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §33-6-8 of said code, and to amend and reenact sections §33-20-4 and §33-20-5
3 of said code, all relating to rate filings for personal lines of insurance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§ 33-6-8. Filing of forms.

1 (a) No insurance policy form, no group certificate form, no insurance application form
2 where a written application is required and is to be made a part of the policy, and no rider,
3 endorsement or other form to be attached to any policy shall be delivered or issued for delivery in
4 this state by an insurer unless it has been filed with the commissioner and, to the extent required
5 by subdivision (1), subsection (b) of this section, approved by the commissioner, except that as
6 to group insurance policies delivered outside this state, only the group certificates to be delivered
7 or issued for delivery in this state shall be filed for approval with the commissioner. This section
8 does not apply to policies, riders, endorsements or forms of unique character designed for and
9 used with relation to insurance upon a particular subject, or which relate to the manner of
10 distribution of benefits or to the reservation of rights and benefits under life or accident and
11 sickness insurance policies, and are used at the request of the individual policyholder, contract
12 holder or certificate holder, nor to the surety bond forms.

13 (b) (1) Forms for noncommercial lines shall be filed by an insurer no less than 60 days in
14 advance of any delivery. At the expiration of the 60-day period, unless the period was extended
15 by the commissioner to obtain additional information from the insurer, the form is deemed to be
16 approved unless prior thereto it was affirmatively approved or disapproved by the commissioner.
17 Approval of any form by the commissioner constitutes a waiver of any unexpired portion of the
18 60-day period.

19 (2) Forms for: (A) Commercial lines property and casualty risks; and (B) any mass-

20 marketed life and/or health insurance policy offered to members of any association by the
21 association shall be filed with the commissioner and need not be approved by the commissioner
22 prior to use. The commissioner may, within the first 30 days after receipt of the form, request
23 information to ensure compliance with applicable statutory provisions and may disapprove forms
24 not in compliance with the provisions of this chapter. If the commissioner does not disapprove the
25 form within the 30-day period, the form is effective upon its first use after filing.

26 (c) When an insurer does not submit supporting information with the form filing that allows
27 the commissioner to determine whether the form meets all applicable statutory requirements, the
28 commissioner shall require the insurer to furnish supporting information. The 60-day period for
29 personal lines risks shall be suspended on the date the commissioner requests additional
30 information and shall recommence on the date the commissioner receives the supporting
31 information: *Provided*, That the commissioner shall have no less than 15 days from receipt of the
32 supporting information to act. The commissioner may request additional information after the
33 initial 60-day period with respect to noncommercial lines, or 30-day period with respect to
34 commercial lines and mass-marketed life and/or health insurance to associations, to ensure
35 continuing compliance with applicable statutory provisions and may at any time, after notice and
36 for cause shown, withdraw any approval or disapprove any form: *Provided, however*, That any
37 disapproval by the commissioner of any form or withdrawal of a previous approval shall state the
38 grounds therefor and shall include a notice that the insurer may request a hearing on the denial
39 or withdrawal of approval.

40 (d) The commissioner may, by order, exempt from the requirements of this section for so
41 long as he or she considers proper any insurance document or form or type specified in the
42 order, to which, in his or her opinion, this section may not practicably be applied, or the filing
43 and approval of which are, in his or her opinion, not desirable or necessary for the protection of
44 the public.

45 (e) For purposes of this section:

46 (1) An association must have a minimum of 61 members at the outset of the issuance of
47 the mass-marketed life and/or health insurance policy and shall have been organized and
48 maintained in good faith for purposes other than that of obtaining or providing insurance. The
49 association shall also have been in active existence for at least two years and shall have a
50 constitution and bylaws which provide that: (A) The association holds annual meetings to further
51 purposes of its members; (B) except in the case of credit unions, the association collects dues or
52 solicits contributions from members; and C) the members have voting privileges and
53 representation on the governing board and committees that exist under the authority of the
54 association: *Provided*, That upon written application by an association and for good cause shown,
55 the commissioner may grant an exemption to the association from the minimum member
56 requirements of this section.

57 (2) "Commercial lines" means insurance for business and professional interests, except
58 that it does not include medical malpractice insurance.

59 (3) "Noncommercial lines" means all insurance other than commercial lines and includes
60 medical malpractice and insurance for personal, family and household needs.

61 (f) This section also applies to any form used by domestic insurers for delivery in a
62 jurisdiction outside West Virginia if the insurance supervisory official of the jurisdiction informs
63 the commissioner that the form is not subject to approval or disapproval by the official and upon
64 the commissioner's order requiring the form to be submitted to him or her for that purpose. The
65 same standards applicable to forms for domestic use apply to forms used by domestic insurers
66 for delivery in a jurisdiction outside West Virginia.

67 (g) Forms for any personal line created pursuant to subsection of §33-20-4(n) of this code
68 shall be filed with the commissioner and need not be approved by the commissioner prior to use.
69 The commissioner may, within the first 30 days after receipt of the form, request information to

70 ensure compliance with applicable statutory provisions and may disapprove forms not in
71 compliance with the provisions of this chapter. If the commissioner does not disapprove the form
72 within the 20-day period, the form is effective upon its first use after filing.

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 (b) Every filing shall state the proposed effective date and shall indicate the character and
12 extent of the coverage contemplated. When a filing is not accompanied by the information upon
13 which the insurer supports the filing and the commissioner does not have sufficient information to
14 determine whether the filing meets the requirements of this article, he or she shall require the
15 insurer to furnish the information upon which it supports the filing and in that event the waiting
16 period shall commence as of the date the information is furnished. The information furnished in
17 support of a filing may include: (1) The experience or judgment of the insurer or rating organization
18 making the filing; (2) the experience or judgment of the insurer or rating organization in the
19 territorial rate areas established by §33-20-3(c)(2) of this code; (3) its interpretation of any
20 statistical data it relies upon; (4) the experience of other insurers or rating organizations; or (5)

21 any other relevant factors. A filing and any supporting information is open to public inspection as
22 soon as the filing is received by the commissioner. Any interested party may file a brief with the
23 commissioner supporting his or her position concerning the filing. Any person or organization may
24 file with the commissioner a signed statement declaring and supporting his or her or its position
25 concerning the filing. Upon receipt of the statement prior to the effective date of the filing, the
26 commissioner shall mail or deliver a copy of the statement to the filer, which may file a reply as it
27 may desire to make. This section is not applicable to any memorandum or statement of any kind
28 by any employee of the commissioner.

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

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

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

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

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

49 (h) Rates for commercial lines property and casualty risks must be filed with the
50 commissioner and the filings need not be approved by the commissioner. The commissioner may
51 request additional information to ensure compliance with applicable statutory standards, but if the
52 commissioner does not disapprove the filing within the initial 30-day period after receipt, the rate
53 filing will become effective upon first usage after filing: *Provided*, That the commissioner may at
54 any time thereafter, after notice and for cause shown, disapprove any rate filing.

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

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

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

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

71 commissioner approves or disapproves the rate increase.

72 (m) For purposes of this section, "commercial" means commercial lines as defined in §33-
73 6-8(e)(2) of this code.

74 (n) A filing with respect to a personal line rate filing that provides for an overall state-wide
75 rate increase or decrease of not more than 10 percent in the aggregate shall take effect the date
76 it is filed and is deemed to meet the requirements of this chapter until and unless it is disapproved
77 by the commissioner as set forth in §33-20-5(h) of this code.

78 (o) For purposes of this section, "personal line" means personal lines as defined in §33-
79 12-8(a)(6) of this code.

§33-20-4a. Biannual rate filings for certain insurance lines.

1 **[Repealed]**

§ 33-20-5. Disapproval of filings.

1 (a) If within the waiting period or any extension thereof as provided in §33-20-4(e) of this
2 code, the commissioner finds that a filing does not meet the requirements of this article, he shall
3 send to the insurer or rating organization which made such filing, written notice of disapproval of
4 such filing specifying therein in what respects he finds such filing fails to meet the requirements
5 of this article and stating that such filing shall not become effective.

6 (b) If within 30 days after a special surety filing subject to §33-20-4(f) of this code or if
7 within 30 days after a specific inland marine rate on a risk specially rated by a rating organization
8 subject §33-20-4(g) of this code has become effective, the commissioner finds that such filing
9 does not meet the requirements of this article, he shall send to the rating organization which made
10 such filing written notice of disapproval of such filing specifying therein in what respects he finds
11 that such filing fails to meet the requirements of this article and stating when, within a reasonable
12 period thereafter, such filing shall be deemed no longer effective. Said disapproval shall not affect
13 any contract made or issued prior to the expiration of the period set forth in said notice.

14 (c) If at any time subsequent to the applicable review period provided for in subsection (a)
15 or (b) of this section, the commissioner finds that a filing does not meet the requirements of this
16 article, he or she shall, after notice and hearing to every insurer and rating organization which
17 made such filing, issue an order specifying in what respects he finds that such filing fails to meet
18 the requirements of this article, and stating when, within a reasonable period thereafter, such filing
19 shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and
20 rating organization. Said order shall not affect any contract or policy made or issued prior to the
21 expiration of the period set forth in said order.

22 (d) Any person or organization aggrieved with respect to any filing which is in effect may
23 demand a hearing thereon. If, after such hearing, the commissioner finds that the filing does not
24 meet the requirements of this article, he or she shall issue an order specifying in what respects
25 he finds that such filing fails to meet the requirements of this article, and stating when, within a
26 reasonable period thereafter, such filing shall be deemed no longer effective. Said order shall not
27 affect any contract or policy made or issued prior to the expiration of the period set forth in said
28 order.

29 (e) Any insurer or rating organization, in respect to any filing made by it which is not
30 approved by the commissioner, may demand a hearing thereon.

31 (f) No manual of classifications, rules, rating plans, or any modification of any of the
32 foregoing which establishes standards for measuring variations in hazards or expense provisions,
33 or both, in the case of casualty insurance to which this article applies and no manual, minimum,
34 class rate, rating schedule, rating plan, rating rule, or any modification of any of the foregoing, in
35 the case of fire insurance to which this article applies, and which has been filed pursuant to the
36 requirements of § 33-20-4 of this code, shall be disapproved if the rates thereby produced meet
37 the requirements of this article.

38 (g) If, in the opinion of the commissioner, the rate or form filing made by an insurer is of

39 such import that it will affect the public he may, at his or her discretion, issue notice to such insurer
40 of a public hearing. The notice of public hearing to the insurer making such form or rate filing shall
41 be made by United States mail at least 15 days prior to hearing date. Notice to the public shall be
42 given by appropriate publication in a newspaper in the form and manner prescribed by §§ 29A-1-
43 1 *et seq.* of this code. The holding of a public hearing as outlined in this subsection shall have the
44 effect of eliminating the right of the party making such filing to demand a hearing as stated in
45 subsections (d) and (e) of this section.

46 (h) If within 30 days after a personal line filing subject to §33-20-4(n) of this code has
47 become effective, the commissioner finds that the filing does not meet the requirements of this
48 article, the commissioner shall send to the rating organization which made the filing written notice
49 of disapproval of the filing specifying therein in what respects he or she finds that the filing fails to
50 meet the requirements of this article and stating when, within a reasonable period thereafter, the
51 filing shall be deemed no longer effective. The disapproval shall not affect any contract made or
52 issued prior to the expiration of the period set forth in the notice.

NOTE: The purpose of this bill is to allow for the creation of a flex band rating system for personal lines of insurance.

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