

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1939

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ENROLLED

SENATE BILL No. 105

(By Mr. W. W. W. W.)

PASSED March 10th 1939

In Effect Thirty days pro Passage

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Senate Bill No. 105

(BY MR. WYLIE)

[Passed March 10, 1939; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, by adding article thirteen, relating to group and family expense accident and health insurance.

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

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding article thirteen, to read as follows:

**Article 13. Group and Family Expense Accident and Health Insurance.**

Section 1. *Companies Authorized to Issue Group and Family Expense Accident and Health Insurance.* Companies or-

3 ganized under the laws of this or of any other state or gov-  
4 ernment authorized by the preceding article of this chapter  
5 to issue policies of accident and health insurance covering  
6 personal injury, disablement or death by accident, disability  
7 resulting from sickness, reimbursement for expenses incident  
8 to personal injury, sickness or death, and other coverages ap-  
9 pertaining to accident and health insurance, may also issue  
10 policies or contracts of group and family expense accident and  
11 health insurance, as hereinafter defined.

Sec. 2. *Definition.* (1) Any contract of insurance which  
2 insures against loss or expense occasioned by death or bodily  
3 injury of the insured resulting from accident or from ac-  
4 cidental means, which covers not less than twenty-five per-  
5 sons shall be deemed a group accident insurance policy. Any  
6 contract of insurance which insures against loss or expense  
7 resulting from disease or sickness of the injured, and which  
8 covers not less than twenty-five persons, shall be deemed a  
9 group health insurance policy. Any contract of insurance  
10 which combines coverage of group accident insurance and  
11 of group health insurance shall be deemed a group accident  
12 and health insurance policy.

13 (2) No contract of group insurance as defined in subsec-  
14 tion 1 shall be made, issued or delivered in this state (other  
15 than as provided in subsection (3) or other than as a con-  
16 tinuation of a contract in force on the effective date of this  
17 act) except with or to an employer, or to an association of  
18 employees of one employer for the benefit of persons other  
19 than the employer or association, for amounts of insurance  
20 based on a plan precluding individual selection, subject to  
21 the following requirements:

22 (a) If the premium is paid by the employer the group shall  
23 comprise all employees or all of any class or classes thereof  
24 determined by conditions pertaining to the employment.

25 (b) If the premium is paid by the employer and employees  
26 jointly, or by the employees, the group shall comprise not less  
27 than 75% of all employees of the employer or not less than  
28 75% of all employees of any class or classes thereof determined  
29 by conditions pertaining to the employment.

30 (3) A group of not less than twenty-five members of (1)  
31 a labor union, or (2) a non-profit corporation organized for  
32 purposes other than that of obtaining insurance, having a  
33 constitution and by-laws, and whose membership is confined

34 to the employees of one employer, its affiliates or subsidiaries,  
35 or (3) an association of school employees or employees of a  
36 federal or a state government, or a political subdivision there-  
37 of, or (4) a volunteer fire company, may be insured under a  
38 contract of group insurance as defined in subsection 1, made  
39 with or issued to any such group for the benefit of persons  
40 other than the group on a plan precluding individual selection.

41 (4) Any of the benefits provided by any contract of group  
42 insurance as defined in this section may be extended so as to  
43 cover dependents of insured employees or members.

44 (5) For the purposes of this section the term employer may  
45 be deemed to include any municipal corporation or the proper  
46 officers as such, of any unincorporated municipality, or any  
47 department of such corporation. The term employees may be  
48 deemed to include the employees of a single employer, the  
49 officers, managers and employees of an employer and of sub-  
50 sidiary or affiliated corporations of a corporate employer and  
51 the individual proprietor partners and employees of indivi-  
52 duals and firms of which the business is controlled by the in-  
53 sured employer through stock ownership contract or other-  
54 wise.

55 (6) Any contract of insurance which covers members of  
56 any one family only, including husband, wife and children,  
57 against hazards mentioned in subsection 1 of this section, or  
58 any of them, shall be deemed a family expense accident and  
59 health insurance policy.

60 Sec. 3. *Approval of Policy Forms.* (1) No policy of  
61 group or family expense accident or group or family  
62 expense health or group or family expense acci-  
63 dent and health insurance and no certificate under any  
64 such policy shall be issued or delivered in this state unless and  
65 until a copy of the form thereof, and all forms of applica-  
66 tions, riders and endorsements for use in connection with the  
67 issuance or renewal thereof, shall have been filed with the  
68 Commissioner and formally approved by him as conforming to  
69 the requirements of this act and not inconsistent with any  
70 other provisions of law applicable thereto; nor shall any such  
71 form be issued or delivered in this state after the Commis-  
72 sioner shall have notified the insurer filing such form of his  
73 disapproval of such form, even though the Commissioner may  
74 have previously approved such form. The Commissioner  
75 shall, within a reasonable time after the filing of any such  
76 form, notify the insurer filing the same either of his approval

17 or of his disapproval of such form ; if disapproved he shall  
18 specify the reasons for the disapproval. If the Commissioner  
19 shall notify the insurer filing such form of either his approval  
20 or disapproval of such form within thirty days of filing the  
21 same, then the insurer shall be permitted to issue or deliver  
22 such form in this state until the Commissioner shall notify the  
23 insurer of his disapproval. The action of the Commissioner  
24 in disapproving any such form shall be subject to judicial  
25 review, by appeal to the Common Pleas Court or other court  
26 of similar jurisdiction located at the seat of state government,  
27 if said appeal shall be taken within thirty days from the date  
28 of notice of said disapproval.

Sec. 4. *Standard Provisions of Group Policies.* (1) No  
2 policy of group accident or group health or group accident and  
3 health insurance and no certificate thereunder, shall be is-  
4 sued or delivered in this state unless the master policy con-  
5 tains in substance the provisions specified in paragraphs (a)  
6 to (o) following :

7 (a) A provision that no statement made by the applicant  
8 or applicants for insurance shall avoid the insurance or re-  
9 duce benefits thereunder unless contained in the written ap-

10 plication signed by the applicant; and a provision that no  
11 agent has authority to change the policy or to waive any of  
12 its provisions and that no change in the policy shall be valid  
13 unless approved by an officer of the insurer and evidenced by  
14 endorsement on the policy.

15 (b) A provision that all statements contained in any  
16 such application shall, in the absence of fraud, be deemed rep-  
17 resentations and not warranties.

18 (c) A provision that all new employees of the employer or  
19 all new members of the organization, as the case may be, in the  
20 groups or classes eligible for insurance must from time to time  
21 be added to such groups or classes eligible for insurance.

22 (d) A provision that the insurer will issue to the em-  
23 ployer or other person or organization in whose name such  
24 policy is issued, for delivery to each member of the insured  
25 group, an individual certificate setting forth in summary form  
26 a statement of the essential features of the insurance coverage  
27 of such employee or such member, to whom benefits there-  
28 under are payable, and such additional information as the na-  
29 ture of the coverage justly requires.

30 (e) A provision to the effect that the insurability of any  
31 member of the insured group does not cease to exist or termi-  
32 nate, by reason of age alone, until such member has attained  
33 the age of sixty-five years.

34 (f) A provision stating the conditions under which the  
35 insurer may decline to renew the policy.

36 (g) A provision specifying the ages, if any there be, to  
37 which the insurance provided therein shall be limited; the  
38 ages, if any there be, for which additional restrictions are  
39 placed on benefits, and the additional restrictions placed on  
40 the benefits at such ages.

41 (h) A provision that written notice of sickness or of in-  
42 jury must be given to the insurer within twenty days after  
43 the date such sickness or injury occurred. Failure to give  
44 notice within such time shall not invalidate nor reduce any  
45 claim if it shall be shown not to have been reasonably possi-  
46 ble to give such notice and that notice was given as soon as was  
47 reasonably possible.

48 (i) A provision that in the case of claim for loss of time  
49 from disability, written proof of such loss must be furnished  
50 to the insurer within thirty days after the commencement of

51 the period for which the insurer is liable, and that subsequent  
52 written proofs of the continuance of such disability must be  
53 furnished to the insurer at such intervals as the insurer may  
54 reasonably require, and that in the case of claim for any other  
55 loss, written proof of such loss must be furnished to the in-  
56 surer within ninety days after the date of such loss. Failure  
57 to furnish such proof within such time shall not invalidate nor  
58 reduce any claim if it shall be shown not to have been reason-  
59 ably possible to furnish such proof and that such proof was  
60 furnished as soon as was reasonably possible.

61 (j) A provision that the insurer will furnish to the policy-  
62 holder such forms as are usually furnished by it for filing  
63 proof of loss. If such forms are not furnished before the ex-  
64 piration of fifteen days after the insurer receives notice of  
65 any claim under the policy, the person making such claim  
66 shall be deemed to have complied with the requirements of  
67 the policy as to proof of loss upon submitting within the time  
68 fixed in the policy for filing proof of loss, written proof cover-  
69 ing the occurrence, character and extent of the loss for which  
70 claim is made.

71 (k) A provision that the insurer shall have the right and

72 opportunity to examine the person of the insured when and  
73 so often as it may reasonably require during the pendency of  
74 claim under the policy and also the right and opportunity to  
75 make an autopsy in case of death where it is not prohibited  
76 by law.

77 (l) A provision that all benefits payable under the policy  
78 other than benefits for loss of time will be payable not more  
79 than sixty days after receipt of proof, and that, subject to  
80 due proof of loss, all accrued benefits payable under the policy  
81 for loss of time will be paid not later than at the expiration of  
82 each period of thirty days during the continuance of the  
83 period for which the insurer is liable, and that any balance  
84 remaining unpaid at the termination of such period will be  
85 paid immediately upon receipt of such proof.

86 (m) In any policy in which a beneficiary is designated, a  
87 provision that consent of the beneficiary shall not be requisite  
88 to any other changes in the policy or certificate, except as may  
89 be specifically provided by the policy.

90 (n) A provision that no action at law or in equity shall  
91 be brought to recover on the policy prior to the expiration of  
92 sixty days after proof of loss has been filed in accordance

93 with the requirements of the policy and that no such action  
94 shall be brought at all unless brought within two years from  
95 the expiration of the time within which proof of loss is re-  
96 quired by the policy.

97 (o) A provision that if any time limitation in the policy  
98 with respect to giving notice of claim or furnishing proof of  
99 loss or bringing action on the policy is less than that per-  
100 mitted by the laws governing the question of such limitation,  
101 such limitation is extended to agree with the minimum period  
102 permitted by such laws.

103 (2) No policy of group accident, or group health or group  
104 accident and health insurance and no certificate thereunder,  
105 shall be issued or delivered in this state, if such policy or cer-  
106 tificate contains any provision inconsistent with any of the  
107 provisions of this section, except that the Commissioner may  
108 approve any provision in any such policy or certificate which  
109 in his opinion is more favorable to policyholders or certificate-  
110 holders than the provision herein prescribed.

111 Sec. 5. *Standard Provisions of Family Expense Policies.*

112 2 No policy of family expense accident or family expense health  
113 3 or family expense accident and health insurance, and no cer-

4 tificate thereunder, shall be issued or delivered in this state  
5 unless the master policy contains, in substance, the provisions  
6 specified in paragraphs (a) and (b) following:

7 (a) A provision that the policy and the application of the  
8 head of the family shall constitute the entire contract between  
9 the parties, and that all statements made by the head of the  
10 family shall, in the absence of fraud, be deemed representa-  
11 tions and not warranties, and that no statement shall be used  
12 in defense to a claim under the policy, unless it is contained  
13 in a written application.

14 (b) A provision that to the family group originally in-  
15 sured shall be added from time to time all new members of  
16 the family eligible for insurance in such family group.

Sec. 6. *Application of Article.* (1) Nothing in this article,  
2 however, shall apply to or affect any policy of liability or  
3 workmen's compensation insurance or any policy of insurance  
4 on which the premiums are payable weekly.

5 (2) Nothing in this article shall apply to nor in any way  
6 affect life insurance, endowment or annuity contracts or con-  
7 tracts supplemental thereto which contain no provisions re-  
8 lating to accident or health insurance except (a) such as

9 provide additional benefits in case of death by accidental  
 10 means, and except (b) such as operate to safeguard such  
 11 contracts against lapse, or to give a special surrender value,  
 12 or special benefit, or an annuity, in the event that the in-  
 13 sured or annuitant shall become totally and permanently dis-  
 14 abled as defined by the contract or supplemental contract.

15 (3) Nothing in this article shall apply to or in any way  
 16 affect fraternal benefit societies.

Sec. 7. *Article Declared Separable; Inconsistent Acts Re-*

2 *pealed.* If any section, paragraph, sentence, clause, word or  
 3 application of any part hereof, be held unconstitutional, the  
 4 same shall not affect the validity of the remaining portions.

5 All acts and parts of acts in conflict with provisions hereof  
 6 are hereby repealed.

I hereby certify that the foregoing bill  
 having been presented to the Governor for  
 his approval, and not having been returned  
 by him to the House of the Legislature in  
 which it originated within the time pre-  
 scribed by the constitution of the State, has  
 become a law without his approval.

This the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

*[Signature]*  
 GOVERNOR OF THE STATE

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

*E. O. Wiseman*  
.....  
Chairman Senate Committee

*W. B. Walter*  
.....  
Chairman House Committee

Originated in the *Senate* .....

Takes effect *Thirty days* .. passage

*Charles H. Hilly*  
.....  
Clerk of the Senate

*Geo. S. Hall*  
.....  
Clerk of the House of Delegates

*Franklin*  
.....  
President of the Senate

*James T. Thomas*  
.....  
Speaker House of Delegates

I certify that the foregoing act, this the .....  
The within .....  
having been presented to the Governor for  
his approval, and not having been returned  
by him to the House of the Legislature in  
which it originated within the time pre-  
scribed by the constitution of the state, has  
become a law without his approval. Governor

This the *17th* day of *March*,  
19*39*

*Amos S. Hild*  
.....  
SECRETARY OF STATE