WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

SENATE BILL No. 105

(By Mr. [Signature])

PASSED [Signature] March 10th, 1939

In Effect [Signature] from Passage

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.
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 organized 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.
(2) No contract of group insurance as defined in subsection 1 shall be made, issued or delivered in this state (other than as provided in subsection (3) or other than as a continuation of a contract in force on the effective date of this act) except with or to an employer, or to an association of employees of one employer for the benefit of persons other than the employer or association, for amounts of insurance based on a plan precluding individual selection, subject to the following requirements:

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

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

(3) A group of not less than twenty-five members of (1) a labor union, or (2) a non-profit corporation organized for purposes other than that of obtaining insurance, having a constitution and by-laws, and whose membership is confined
to the employees of one employer, its affiliates or subsidiaries, or (3) an association of school employees or employees of a federal or a state government, or a political subdivision thereof, or (4) a volunteer fire company, may be insured under a contract of group insurance as defined in subsection 1, made with or issued to any such group for the benefit of persons other than the group on a plan precluding individual selection.

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

(5) For the purposes of this section the term employer may be deemed to include any municipal corporation or the proper officers as such, of any unincorporated municipality, or any department of such corporation. The term employees may be deemed to include the employees of a single employer, the officers, managers and employees of an employer and of subsidiary or affiliated corporations of a corporate employer and the individual proprietor partners and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership contract or otherwise.
Any contract of insurance which covers members of any one family only, including husband, wife and children, against hazards mentioned in subsection 1 of this section, or any of them, shall be deemed a family expense accident and health insurance policy.

Sec. 3. Approval of Policy Forms. (1) No policy of group or family expense accident or group or family expense health or group or family expense accident and health insurance and no certificate under any such policy shall be issued or delivered in this state unless and until a copy of the form thereof, and all forms of applications, riders and endorsements for use in connection with the issuance or renewal thereof, shall have been filed with the Commissioner and formally approved by him as conforming to the requirements of this act and not inconsistent with any other provisions of law applicable thereto; nor shall any such form be issued or delivered in this state after the Commissioner shall have notified the insurer filing such form of his disapproval of such form, even though the Commissioner may have previously approved such form. The Commissioner shall, within a reasonable time after the filing of any such form, notify the insurer filing the same either of his approval
or of his disapproval of such form; if disapproved he shall specify the reasons for the disapproval. If the Commissioner shall notify the insurer filing such form of either his approval or disapproval of such form within thirty days of filing the same, then the insurer shall be permitted to issue or deliver such form in this state until the Commissioner shall notify the insurer of his disapproval. The action of the Commissioner in disapproving any such form shall be subject to judicial review, by appeal to the Common Pleas Court or other court of similar jurisdiction located at the seat of state government, if said appeal shall be taken within thirty days from the date of notice of said disapproval.

Sec. 4. Standard Provisions of Group Policies. (1) No policy of group accident or group health or group accident and health insurance and no certificate thereunder, shall be issued or delivered in this state unless the master policy contains in substance the provisions specified in paragraphs (a) to (o) following:

(a) A provision that no statement made by the applicant or applicants for insurance shall avoid the insurance or reduce benefits thereunder unless contained in the written ap-
plication signed by the applicant; and a provision that no agent has authority to change the policy or to waive any of its provisions and that no change in the policy shall be valid unless approved by an officer of the insurer and evidenced by endorsement on the policy.

(b) A provision that all statements contained in any such application shall, in the absence of fraud, be deemed representations and not warranties.

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

(d) A provision that the insurer will issue to the employer or other person or organization in whose name such policy is issued, for delivery to each member of the insured group, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage of such employee or such member, to whom benefits thereunder are payable, and such additional information as the nature of the coverage justly requires.
(e) A provision to the effect that the insurability of any member of the insured group does not cease to exist or terminate, by reason of age alone, until such member has attained the age of sixty-five years.

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

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

(h) A provision that written notice of sickness or of injury must be given to the insurer within twenty days after the date such sickness or injury occurred. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(i) A provision that in the case of claim for loss of time from disability, written proof of such loss must be furnished to the insurer within thirty days after the commencement of
the period for which the insurer is liable, and that subsequent
written proofs of the continuance of such disability must be
furnished to the insurer at such intervals as the insurer may
reasonably require, and that in the case of claim for any other
loss, written proof of such loss must be furnished to the in-
surer within ninety days after the date of such loss. Failure
to furnish such proof within such time shall not invalidate nor
reduce any claim if it shall be shown not to have been reason-
ably possible to furnish such proof and that such proof was
furnished as soon as was reasonably possible.

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

(k) A provision that the insurer shall have the right and
opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law.

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

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

(n) A provision that no action at law or in equity shall be brought to recover on the policy prior to the expiration of sixty days after proof of loss has been filed in accordance
with the requirements of the policy and that no such action shall be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

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

(2) No policy of group accident, or group health or group accident and health insurance and no certificate thereunder, shall be issued or delivered in this state, if such policy or certificate contains any provision inconsistent with any of the provisions of this section, except that the Commissioner may approve any provision in any such policy or certificate which in his opinion is more favorable to policyholders or certificateholders than the provision herein prescribed.

Sec. 5. Standard Provisions of Family Expense Policies. No policy of family expense accident or family expense health or family expense accident and health insurance, and no cer-
tificate thereunder, shall be issued or delivered in this state unless the master policy contains, in substance, the provisions specified in paragraphs (a) and (b) following:

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

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

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

(2) Nothing in this article shall apply to nor in any way affect life insurance, endowment or annuity contracts or contracts supplemental thereto which contain no provisions relating to accident or health insurance except (a) such as
provide additional benefits in case of death by accidental
means, and except (b) such as operate to safeguard such
contracts against lapse, or to give a special surrender value,
or special benefit, or an annuity, in the event that the in­
sured or annuitant shall become totally and permanently dis­
abled as defined by the contract or supplemental contract.

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

Sec. 7. Article Declared Separable; Inconsistent Acts Re­
pealed. If any section, paragraph, sentence, clause, word or
application of any part hereof, be held unconstitutional, the
same shall not affect the validity of the remaining portions.

All acts and parts of acts in conflict with provisions hereof
are hereby repealed.
The Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect [date]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

I certify that the foregoing act, 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 prescribed by the constitution of the State, has become a law without his approval.

Governor

This the 17th day of March, 1939.

Secretary of State