

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-29-81

Time \_\_\_\_\_

No. 361

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1981



**ENROLLED**

*Committee Substitute for*  
SENATE BILL NO. 361

(By Mr. *Nelson* & Mr. *Susman*)



PASSED ..... April 11, ..... 1981

In Effect ninty days from Passage



# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 361

(MR. NELSON and MR. SUSMAN, *original sponsors*)

[Passed April 11, 1981; 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, as amended, by adding thereto a new article, designated article twenty-nine; and to amend article six, chapter forty-six-a of said code, by adding thereto a new section, designated section one hundred nine, all relating to guidelines for the use of simplified language in life and accident and sickness insurance policies; construction; approval of forms; authority of insurance commissioner with respect thereto; the use of plain language in consumer transactions; and providing for actions for reforming consumer transaction agreements and awarding of costs including reasonable attorney fees in such actions.

*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, as amended, be amended by adding thereto a new article, designated article twenty-nine; and to amend article six, chapter forty-six-a of said code, by adding thereto a new section, designated section one hundred nine, all to read as follows:

### CHAPTER 33. INSURANCE.

#### ARTICLE 29. LIFE AND ACCIDENT AND SICKNESS INSURANCE POLICY LANGUAGE SIMPLIFICATION ACT.

##### §33-29-1. Title.

- 1 This article may be cited as the Life and Accident and
- 2 Sickness Insurance Policy Language Simplification Act.

**§33-29-2. Purpose.**

1 The purpose of this article is to establish minimum  
2 standards for language used in policies, contracts and  
3 certificates of life insurance, accident and sickness insurance,  
4 credit life insurance and credit accident and sickness  
5 insurance delivered or issued for delivery in this state to  
6 facilitate ease of reading by insureds.

7 This article is not intended to increase the risk assumed by  
8 insurance companies or other entities subject to this article or  
9 to supersede their obligation to comply with the substance of  
10 other insurance legislation applicable to life, accident and  
11 sickness, credit life or credit accident and sickness insurance  
12 policies. This article is not intended to impede flexibility and  
13 innovation in the development of policy forms or content or  
14 to lead to the standardization of policy forms or content.

**§33-29-3. Definitions.**

1 (a) "Policy" or "policy form" means any policy, contract,  
2 plan or agreement of life or accident and sickness insurance,  
3 including credit life insurance and credit accident and  
4 sickness insurance, delivered or issued for delivery in this  
5 state by any company subject to this article; any certificate,  
6 contract or policy issued by a fraternal benefit society; and  
7 any certificate issued pursuant to a group insurance policy  
8 delivered or issued for delivery in this state.

9 (b) "Company" or "insurer" means any life or accident  
10 and sickness insurance company, fraternal benefit society,  
11 nonprofit health service corporation, nonprofit hospital  
12 service corporation, nonprofit medical service corporation,  
13 prepaid health plan, dental care plan, vision care plan,  
14 pharmaceutical plan, health maintenance organization, and  
15 all similar type organizations.

**§33-29-4. Applicability and scope.**

1 (a) This article shall apply to all policies delivered or  
2 issued for delivery in this state by any company on or after  
3 the date such forms must be approved under this article, but  
4 nothing in this article shall apply to:

5 (1) Any policy which is a security subject to federal  
6 jurisdiction;

7 (2) Any group policy covering a group of one thousand or  
8 more lives at date of issue, other than a group credit life  
9 insurance policy or a group credit accident and sickness

10 insurance policy; however, this shall not exempt any  
11 certificate issued pursuant to a group policy delivered or  
12 issued for delivery in this state;

13 (3) Any group annuity contract which serves as a funding  
14 vehicle for pension, profit sharing, or deferred compensation  
15 plans;

16 (4) Any form used in connection with, as a conversion  
17 from, as an addition to, or in exchange pursuant to a  
18 contractual provision for, a policy delivered or issued for  
19 delivery on a form approved or permitted to be issued prior to  
20 the dates such forms must be approved under this article; or

21 (5) The renewal of a policy delivered or issued for delivery  
22 prior to the dates such forms must be approved under this  
23 article.

24 (b) No other statute of this state setting language  
25 simplification standards shall apply to any policy forms.

**§33-29-5. Minimum policy language simplification standards.**

1 (a) In addition to any other requirements of law, no policy  
2 forms, except as stated in section four of this article, shall be  
3 delivered or issued for delivery in this state on or after the  
4 dates such forms must be approved under this article unless:

5 (1) The text achieves a minimum score of forty on the  
6 Flesch reading ease test or an equivalent score on any other  
7 comparable test as provided in subsection (c) of this section;

8 (2) It is printed, except for specification pages, schedules  
9 and tables, in not less than ten point type, one point leaded;

10 (3) The style, arrangement and overall appearance of the  
11 policy give no undue prominence to any portion of the text of  
12 the policy or to any endorsements or riders; and

13 (4) It contains a table of contents or an index of the  
14 principal sections of the policy, if the policy has more than  
15 three thousand words printed on three or fewer pages of text,  
16 or if the policy has more than three pages regardless of the  
17 number of words.

18 (b) For the purposes of this section, a Flesch reading ease  
19 test score shall be measured by the following method:

20 (1) For policy forms containing ten thousand words or less  
21 of text, the entire form shall be analyzed. For policy forms  
22 containing more than ten thousand words, the readability of  
23 two two-hundred word samples per page may be analyzed  
24 instead of the entire form. The samples shall be separated by  
25 at least twenty printed lines;

26 (2) The number of words and sentences in the text shall be  
27 counted and the total number of words divided by the total  
28 number of sentences. The figure obtained shall be multiplied  
29 by a factor of one and fifteen one-thousandths;

30 (3) The total number of syllables shall be counted and  
31 divided by the total number of words. The figure obtained  
32 shall be multiplied by a factor of eighty four and six tenths;

33 (4) The sum of the figures computed under subdivisions  
34 (2) and (3), subsection (b) of this section, subtracted from two  
35 hundred six and eight hundred thirty-five one-thousandths  
36 equals the Flesch reading ease score for the policy form;

37 (5) For purposes of subdivisions (2), (3) and (4), subsection  
38 (b) of this section, the following procedures shall be used:

39 (A) A contraction, hyphenated word, or numbers and  
40 letters, when separated by spaces, shall be counted as one  
41 word;

42 (B) A unit of words ending with a period, semicolon, or  
43 colon, but excluding headings and captions, shall be counted  
44 as a sentence; and

45 (C) A syllable means a unit of spoken language consisting  
46 of one or more letters of a word as defined by an accepted  
47 dictionary. Where the dictionary shows two or more equally  
48 acceptable pronunciations of a word, the pronunciation  
49 containing fewer syllables may be used.

50 (6) The term "text" as used in this section shall include all  
51 printed matter except the following:

52 (A) The name and address of the insurer; the name,  
53 number or title of the policy; the table of contents or index;  
54 captions and subcaptions; specification pages, schedules or  
55 tables; and

56 (B) Any policy language which is drafted to conform to  
57 the requirements of any federal law, regulation or agency  
58 interpretation; any policy language required by any  
59 collectively bargained agreement; any medical terminology;  
60 any words which are defined in the policy; and any policy  
61 language required by law or regulation: *Provided*, That the  
62 insurer identifies the language or terminology excepted by  
63 this paragraph and certifies, in writing, that the language or  
64 terminology is entitled to be excepted by this paragraph.

65 (c) Any other reading test may be approved by the  
66 commissioner for use as an alternative to the Flesch reading  
67 ease test if it is comparable in result to the Flesch reading ease  
68 test.

69 (d) Filings subject to this section shall be accompanied by  
70 a certificate signed by an officer of the insurer stating that it  
71 meets the minimum reading ease score on the test used or  
72 stating that the score is lower than the minimum required but  
73 should be approved in accordance with section seven of this  
74 article. To confirm the accuracy of any certification, the  
75 commissioner may require the submission of further  
76 information to verify the certification in question.

77 (e) At the option of the insurer, riders, endorsements,  
78 applications, and other forms made a part of the policy may  
79 be scored as separate forms or as part of the policy with which  
80 they may be used.

**§33-29-6. Construction.**

1 Nothing in this article shall be construed to negate any law  
2 of this state permitting the issuance of any policy form after it  
3 has been on file for the time period specified.

**§33-29-7. Powers of the commissioner.**

1 The commissioner may authorize a lower score than the  
2 Flesch reading ease score required in subdivision (1),  
3 subsection (a), section five of this article whenever, in his sole  
4 discretion, he finds that a lower score: (a) will provide a more  
5 accurate reflection of the readability of a policy form; (b) is  
6 warranted by the nature of a particular policy form or type or  
7 class of policy forms; or (c) is caused by certain policy  
8 language which is drafted to conform to the requirements of  
9 any state law, regulation or agency interpretation.

**§33-29-8. Approval of forms.**

1 A policy form meeting the requirements of subsection (a),  
2 section five of this article shall be approved notwithstanding  
3 the provisions of any other laws which specify the content of  
4 policies, if the policy form provides the policyholders and  
5 claimants protection not less favorable than they would be  
6 entitled to under such laws.

**§33-29-9. Effective dates.**

1 (a) Except as provided in section four, this article applies  
2 to all policy forms filed on or after the first day of July, one  
3 thousand nine hundred eighty-three. No policy form shall be  
4 delivered or issued for delivery in this state on or after the  
5 first day of July, one thousand nine hundred eighty-six,  
6 unless approved by the commissioner or permitted to be

7 issued under this article. Any policy form which has been  
8 approved or permitted to be issued prior to the first day of  
9 July, one thousand nine hundred eighty-six, and which meets  
10 the standards set by this article need not be refiled for  
11 approval, but may continue to be lawfully delivered or issued  
12 for delivery in this state upon the filing with the  
13 commissioner of a list of such forms identified by form  
14 number and accompanied by a certificate as to each such  
15 form in the manner provided in subsection (d), section five of  
16 this article.

17 (b) The commissioner, may, at his discretion and after  
18 notice of hearing, extend the dates in subsection (a) of this  
19 section.

#### **CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.**

##### **ARTICLE 6. GENERAL CONSUMER PROTECTION.**

##### **§46A-6-109. The use of plain language in consumer transactions.**

1 (a) Every written agreement entered into by a consumer  
2 after the first day of April, one thousand nine hundred  
3 eighty-two, for the purchase or lease of goods or services in  
4 consumer transactions, whether for the rental of space to be  
5 occupied for residential purposes or for the sale of goods or  
6 services for personal, family, household or agricultural  
7 purposes, must: (1) Be written in a clear and coherent  
8 manner, using words with common and everyday meanings;  
9 (2) use type of an easily readable size and ink which  
10 adequately contrasts with the paper; and (3) be appropriately  
11 organized and captioned by its various sections to be easily  
12 understood.

13 (b) A violation of the provisions of this section shall not  
14 render any agreement void or voidable: *Provided*, That if a  
15 consumer at the time of entering into a consumer transaction  
16 or anytime thereafter, requests of the other party thereto that  
17 the agreement evidencing the consumer transaction be  
18 changed or written in a manner to conform with this section,  
19 and that request is refused, then a consumer shall have a  
20 cause of action to require a consumer agreement not in  
21 conformity with the provisions of this section to be reformed.  
22 This section shall not be construed to prohibit the use of  
23 words or phrases specifically required or specifically  
24 permitted by state or federal law, rule or regulation. This

25 section shall not be construed to preclude a consumer from  
26 asserting a claim or defense which would have been available  
27 to the consumer if this provision were not in effect. A  
28 consumer may not waive the rights provided by this section,  
29 and any attempted waiver shall be void.

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

*R. P. Baylor*  
Chairman Senate Committee

*Tony E. Whitlow*  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

*Judd C. Wallis*  
Clerk of the Senate

*W. Blankenship*  
Clerk of the House of Delegates

*Wanda R. Brown*  
President of the Senate

*Walter M. Lee, Jr.*  
Speaker House of Delegates

The within in appened this the 29  
day of April, 1981.

*J. M. Rhymer*  
Governor

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SECY. OF STATE