WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
Committee Substitute for
SENATE BILL NO. 361

(By Mr. Wilson and Mr. Suarez)

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 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
insurance policy; however, this shall not exempt any
certificate issued pursuant to a group policy delivered or
issued for delivery in this state;
(3) Any group annuity contract which serves as a funding
vehicle for pension, profit sharing, or deferred compensation
plans;
(4) Any form used in connection with, as a conversion
from, as an addition to, or in exchange pursuant to a
contractual provision for, a policy delivered or issued for
delivery on a form approved or permitted to be issued prior to
the dates such forms must be approved under this article; or
(5) The renewal of a policy delivered or issued for delivery
prior to the dates such forms must be approved under this
article.
(b) No other statute of this state setting language
simplification standards shall apply to any policy forms.

§33-29-5. Minimum policy language simplification standards.
(a) In addition to any other requirements of law, no policy
forms, except as stated in section four of this article, shall be
delivered or issued for delivery in this state on or after the
dates such forms must be approved under this article unless:
(1) The text achieves a minimum score of forty on the
Flesch reading ease test or an equivalent score on any other
comparable test as provided in subsection (c) of this section;
(2) It is printed, except for specification pages, schedules
and tables, in not less than ten point type, one point leaded;
(3) The style, arrangement and overall appearance of the
policy give no undue prominence to any portion of the text of
the policy or to any endorsements or riders; and
(4) It contains a table of contents or an index of the
principal sections of the policy, if the policy has more than
three thousand words printed on three or fewer pages of text,
or if the policy has more than three pages regardless of the
number of words.
(b) For the purposes of this section, a Flesch reading ease
test score shall be measured by the following method:
(1) For policy forms containing ten thousand words or less
of text, the entire form shall be analyzed. For policy forms
containing more than ten thousand words, the readability of
two two-hundred word samples per page may be analyzed
instead of the entire form. The samples shall be separated by
at least twenty printed lines;
(2) The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of one and fifteen one-thousandths;

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

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

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

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

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

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

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

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

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

(c) Any other reading test may be approved by the commissioner for use as an alternative to the Flesch reading ease test if it is comparable in result to the Flesch reading ease test.
(d) Filings subject to this section shall be accompanied by a certificate signed by an officer of the insurer stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with section seven of this article. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.

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

§33-29-6. Construction.
Nothing in this article shall be construed to negate any law of this state permitting the issuance of any policy form after it has been on file for the time period specified.

§33-29-7. Powers of the commissioner.
The commissioner may authorize a lower score than the Flesch reading ease score required in subdivision (1), subsection (a), section five of this article whenever, in his sole discretion, he finds that a lower score: (a) will provide a more accurate reflection of the readability of a policy form; (b) is warranted by the nature of a particular policy form or type or class of policy forms; or (c) is caused by certain policy language which is drafted to conform to the requirements of any state law, regulation or agency interpretation.

§33-29-8. Approval of forms.
A policy form meeting the requirements of subsection (a), section five of this article shall be approved notwithstanding the provisions of any other laws which specify the content of policies, if the policy form provides the policyholders and claimants protection not less favorable than they would be entitled to under such laws.

(a) Except as provided in section four, this article applies to all policy forms filed on or after the first day of July, one thousand nine hundred eighty-three. No policy form shall be delivered or issued for delivery in this state on or after the first day of July, one thousand nine hundred eighty-six, unless approved by the commissioner or permitted to be
issued under this article. Any policy form which has been approved or permitted to be issued prior to the first day of July, one thousand nine hundred eighty-six, and which meets the standards set by this article need not be refiled for approval, but may continue to be lawfully delivered or issued for delivery in this state upon the filing with the commissioner of a list of such forms identified by form number and accompanied by a certificate as to each such form in the manner provided in subsection (d), section five of this article.

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

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

(b) A violation of the provisions of this section shall not render any agreement void or voidable: Provided, That if a consumer at the time of entering into a consumer transaction or anytime thereafter, requests of the other party thereto that the agreement evidencing the consumer transaction be changed or written in a manner to conform with this section, and that request is refused, then a consumer shall have a cause of action to require a consumer agreement not in conformity with the provisions of this section to be reformed. This section shall not be construed to prohibit the use of words or phrases specifically required or specifically permitted by state or federal law, rule or regulation. This
section shall not be construed to preclude a consumer from asserting a claim or defense which would have been available to the consumer if this provision were not in effect. A consumer may not waive the rights provided by this section, and any attempted waiver shall be void.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

R. P. Taylor
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Joel A. Wells
Clerk of the Senate

V. A. Blankenship
Clerk of the House of Delegates

Warren P. Patmon
President of the Senate

Speaker House of Delegates

The within ______ in approval this the ______ day of _______, 1981.

John J. Rhoades
Governor