

HB 249

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SENATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 2491

(By Delegate Mr. Isenher, Mr. Chambers,)
+ Delegate Ashley
[By Request of the Executive]

— ● —

Passed March 11, 1995

In Effect 90 Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2491

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATE ASHLEY)
[By Request of the Executive]

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections six, article twenty-four of said chapter; to amend and reenact sections one-a, two, four and five, article fifteen, chapter thirty-three of said code; to further amend said article by adding thereto two new sections, designated sections one-b and twenty; and to amend article sixteen of said chapter by adding thereto a new section, designated section fifteen, all relating to accident and sickness insurance, excluding individual, employee and employer deposits, to medical savings accounts from adjusted gross income for purposes of personal income tax and from taxable income for purposes of corporation net income tax, requiring the guaranty of renewability for individual accident and sickness policies, establishing rate criteria for individual major medical policies, deleting an optional relation of earnings to insurance proviso, permitting establishment of individual medical savings accounts to serve as self-insurance for the payment of medical expenses, authorizing combined plans to defray medical expenses included within deductible provisions of an individual or group insurance plan and therefor not payable

under that plan, definitions, ownership of accounts, contributions, trustees, restricting withdrawals from medical savings accounts for purposes other than payment of medical expenses, requiring insurance commissioner to issue regulations for plan standards, and authorizing tax commissioner to provide penalties for early withdrawal by legislative rule.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section six, article twenty-four of said chapter be amended and reenacted; that sections one-a, two, four and five, article fifteen, chapter thirty-three of said code be amended and reenacted; that said article be further amended by adding thereto two new sections, designated section one-b and twenty; and that article sixteen of said chapter be amended by adding thereto a new section, designated section fifteen, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* — The West Virginia adjusted gross in-
2 come of a resident individual means his federal adjusted
3 gross income as defined in the laws of the United States
4 for the taxable year with the modifications specified in this
5 section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.* — There shall be added to federal adjusted gross
8 income unless already included therein the following
9 items:

10 (1) Interest income on obligations of any state other
11 than this state or of a political subdivision of any other
12 state unless created by compact or agreement to which this
13 state is a party;

14 (2) Interest or dividend income on obligations or
15 securities of any authority, commission or instrumentality
16 of the United States, which the laws of the United States

17 exempt from federal income tax but not from state in-
18 come taxes;

19 (3) Income taxes imposed by this state or any other
20 taxing jurisdiction, to the extent deductible in determining
21 federal adjusted gross income and not credited against
22 federal income tax: *Provided*, That this modification shall
23 not be made for taxable years beginning after the
24 thirty-first day of December, one thousand nine hundred
25 eighty-six;

26 (4) Interest on indebtedness incurred or continued to
27 purchase or carry obligations or securities the income
28 from which is exempt from tax under this article, to the
29 extent deductible in determining federal adjusted gross
30 income;

31 (5) Interest on a depository institution tax-exempt
32 savings certificate which is allowed as an exclusion from
33 federal gross income under Section 128 of the Internal
34 Revenue Code, for the federal taxable year;

35 (6) The amount allowed as a deduction from federal
36 gross income under Section 221 of the Internal Revenue
37 Code by married couples who file a joint federal return
38 for the federal taxable year: *Provided*, That this modifica-
39 tion shall not be made for taxable years beginning after
40 the thirty-first day of December, one thousand nine hun-
41 dred eighty-six;

42 (7) The deferral value of certain income that is not
43 recognized for federal tax purposes, which value shall be
44 an amount equal to a percentage of the amount allowed as
45 a deduction in determining federal adjusted gross income
46 pursuant to the accelerated cost recovery system under
47 Section 168 of the Internal Revenue Code for the federal
48 taxable year, with the percentage of the federal deduction
49 to be added as follows with respect to the following recov-
50 ery property: Three-year property — no modification;
51 five-year property — ten percent; ten-year property —
52 fifteen percent; fifteen-year public utility property —
53 twenty-five percent; and fifteen-year real property —
54 thirty-five percent: *Provided*, That this modification shall
55 not apply to any person whose federal deduction is deter-

56 mined by the use of the straight line method: *Provided*,
57 *however*, That this modification shall not be made for
58 taxable years beginning after the thirty-first day of De-
59 cember, one thousand nine hundred eighty-six; and

60 (8) The amount of a lump sum distribution for which
61 the taxpayer has elected under Section 402(e) of the Inter-
62 nal Revenue Code of 1986, as amended, to be separately
63 taxed for federal income tax purposes.

64 (c) *Modifications reducing federal adjusted gross*
65 *income*. — There shall be subtracted from federal adjusted
66 gross income to the extent included therein:

67 (1) Interest income on obligations of the United States
68 and its possessions to the extent includible in gross income
69 for federal income tax purposes;

70 (2) Interest or dividend income on obligations or
71 securities of any authority, commission or instrumentality
72 of the United States or of the state of West Virginia to the
73 extent includible in gross income for federal income tax
74 purposes but exempt from state income taxes under the
75 laws of the United States or of the state of West Virginia,
76 including federal interest or dividends paid to sharehold-
77 ers of a regulated investment company, under Section 852
78 of the Internal Revenue Code for taxable years ending
79 after the thirtieth day of June, one thousand nine hundred
80 eighty-seven;

81 (3) Any gain from the sale or other disposition of
82 property having a higher fair market value on the first day
83 of January, one thousand nine hundred sixty-one, than the
84 adjusted basis at said date for federal income tax purposes:
85 *Provided*, That the amount of this adjustment is limited to
86 that portion of any gain which does not exceed the differ-
87 ence between the fair market value and the adjusted basis:
88 *Provided, however*, That if the gain is considered a
89 long-term capital gain for federal income tax purposes,
90 the modification shall be limited to forty percent of the
91 portion of the gain: *Provided further*, That this modifica-
92 tion shall not be made for taxable years beginning after
93 the thirty-first day of December, one thousand nine hun-
94 dred eighty-six;

95 (4) The amount of any refund or credit for overpay-
96 ment of income taxes imposed by this state, or any other
97 taxing jurisdiction, to the extent properly included in
98 gross income for federal income tax purposes;

99 (5) Annuities, retirement allowances, returns of contri-
100 butions and any other benefit received under the West
101 Virginia public employees retirement system, the West
102 Virginia state teachers retirement system and all forms of
103 military retirement, including regular armed forces, re-
104 serves and national guard, including any survivorship
105 annuities derived therefrom, to the extent includible in
106 gross income for federal income tax purposes: *Provided*,
107 That notwithstanding any provisions in this code to the
108 contrary this modification shall be limited to the first two
109 thousand dollars of benefits received under the West Vir-
110 ginia public employees retirement system, the West Vir-
111 ginia state teachers retirement system and all forms of
112 military retirement including regular armed forces, re-
113 serves and national guard, including any survivorship
114 annuities derived therefrom, to the extent includible in
115 gross income for federal income tax purposes for taxable
116 years beginning after the thirty-first day of December, one
117 thousand nine hundred eighty-six; and the first two thou-
118 sand dollars of benefits received under any federal retire-
119 ment system to which Title 4 U.S.C. §111 applies: *Provid-*
120 *ed, however*, That the total modification under this para-
121 graph shall not exceed two thousand dollars per person
122 receiving retirement benefits and this limitation shall apply
123 to all returns or amended returns filed after the last day of
124 December, one thousand nine hundred eighty-eight;

125 (6) Retirement income received in the form of pen-
126 sions and annuities after the thirty-first day of December,
127 one thousand nine hundred seventy-nine, under any West
128 Virginia police, West Virginia firemen's retirement system
129 or the West Virginia department of public safety death,
130 disability and retirement fund, including any survivorship
131 annuities derived therefrom, to the extent includible in
132 gross income for federal income tax purposes;

133 (7) Federal adjusted gross income in the amount of
134 eight thousand dollars received from any source after the

135 thirty-first day of December, one thousand nine hundred
136 eighty-six, by any person who has attained the age of
137 sixty-five on or before the last day of the taxable year, or
138 by any person certified by proper authority as permanent-
139 ly and totally disabled, regardless of age, on or before the
140 last day of the taxable year, to the extent includible in
141 federal adjusted gross income for federal tax purposes:
142 *Provided*, That if a person has a medical certification from
143 a prior year and he is still permanently and totally dis-
144 abled, a copy of the original certificate is acceptable as
145 proof of disability. A copy of the form filed for the feder-
146 al disability income tax exclusion is acceptable: *Provided*,
147 *however*, That:

148 (i) Where the total modification under subdivisions
149 (1), (2), (5) and (6) of this subsection is eight thousand
150 dollars per person or more, no deduction shall be allowed
151 under this subdivision; and

152 (ii) Where the total modification under subdivisions
153 (1), (2), (5) and (6) of this subsection is less than eight
154 thousand dollars per person, the total modification allowed
155 under this subdivision for all gross income received by
156 that person shall be limited to the difference between eight
157 thousand dollars and the sum of modifications under
158 subdivisions;

159 (8) Federal adjusted gross income in the amount of
160 eight thousand dollars received from any source after the
161 thirty-first day of December, one thousand nine hundred
162 eighty-six, by the surviving spouse of any person who had
163 attained the age of sixty-five or who had been certified as
164 permanently and totally disabled, to the extent includible
165 in federal adjusted gross income for federal tax purposes:
166 *Provided*, That:

167 (i) Where the total modification under subdivisions
168 (1), (2), (5), (6) and (7) of this subsection is eight thou-
169 sand dollars or more, no deduction shall be allowed under
170 this subdivision; and

171 (ii) Where the total modification under subdivisions
172 (1), (2), (5), (6) and (7) of this subsection is less than eight
173 thousand dollars per person, the total modification allowed

174 under this subdivision for all gross income received by
175 that person shall be limited to the difference between eight
176 thousand dollars and the sum of the subdivisions;

177 (9) Any pay or allowances received, after the
178 thirty-first day of December, one thousand nine hundred
179 seventy-nine, by West Virginia residents who have not
180 attained the age of sixty-five, as compensation for active
181 service in the armed forces of the United States: *Provided*,
182 That the deduction shall be limited to an amount not to
183 exceed four thousand dollars: *Provided, however*, That
184 this modification shall not be made for taxable years be-
185 ginning after the thirty-first day of December, one thou-
186 sand nine hundred eighty-six;

187 (10) Gross income to the extent included in federal
188 adjusted gross income under Section 86 of the Internal
189 Revenue Code for federal income tax purposes: *Provided*,
190 That this modification shall not be made for taxable years
191 beginning after the thirty-first day of December, one
192 thousand nine hundred eighty-six;

193 (11) The amount of any lottery prize awarded by the
194 West Virginia state lottery commission, to the extent prop-
195 erly included in gross income for federal income tax pur-
196 poses: *Provided*, That for taxable years beginning after
197 the thirty first day of December, one thousand nine hun-
198 dred ninety-two, this modification shall not be made for
199 lottery prizes awarded by the West Virginia state lottery
200 commission;

201 (12) Individual, employee and employer contributions
202 and interest accruing to medical savings accounts off set
203 by withdrawals for purposes other than payment of medi-
204 cal expenses or retirement on or after age fifty-five estab-
205 lished pursuant to section twenty, article fifteen or section
206 fifteen, article sixteen, chapter thirty-three of this code, to
207 the extent includible in federal adjusted gross income for
208 federal tax purposes: *Provided*, That the amount subtract-
209 ed pursuant to this subsection for any one taxable year
210 may not exceed two thousand dollars; and

211 (13) Any other income which this state is prohibited
212 from taxing under the laws of the United States.

213 (d) *Modification for West Virginia fiduciary adjust-*
214 *ment.* — There shall be added to or subtracted from feder-
215 al adjusted gross income, as the case may be, the
216 taxpayer's share, as beneficiary of an estate or trust, of the
217 West Virginia fiduciary adjustment determined under
218 section nineteen of this article.

219 (e) *Partners and S corporation shareholders.* — The
220 amounts of modifications required to be made under this
221 section by a partner or an S corporation shareholder,
222 which relate to items of income, gain, loss or deduction of
223 a partnership or an S corporation, shall be determined
224 under section seventeen of this article.

225 (f) *Husband and wife.* — If husband and wife deter-
226 mine their federal income tax on a joint return but deter-
227 mine their West Virginia income taxes separately, they
228 shall determine their West Virginia adjusted gross incomes
229 separately as if their federal adjusted gross incomes had
230 been determined separately.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable income.

1 (a) *General.* — In determining West Virginia taxable
2 income of a corporation, its taxable income as defined for
3 federal income tax purposes shall be adjusted and deter-
4 mined before the apportionment provided by section
5 seven of this article, by the items specified in this section.

6 (b) *Adjustments increasing federal taxable income.* —
7 There shall be added to federal taxable income, unless
8 already included in the computation of federal taxable
9 income, the following items:

10 (1) Interest or dividends on obligations or securities of
11 any state or of a political subdivision or authority thereof;

12 (2) Interest or dividends (less related expenses to the
13 extent not deducted in determining federal taxable in-
14 come) on obligations or securities of any authority, com-
15 mission or instrumentality of the United States which the
16 laws of the United States exempt from federal income tax

17 but not from state income taxes;

18 (3) Income taxes and other taxes, including franchise
19 and excise taxes, which are based on, measured by, or
20 computed with reference to net income, imposed by this
21 state or any other taxing jurisdiction, to the extent deduct-
22 ed in determining federal taxable income;

23 (4) The amount of unrelated business taxable income
24 as defined by Section 512 of the Internal Revenue Code
25 of 1986, as amended, of a corporation which by reason of
26 its purposes is generally exempt from federal income
27 taxes; and

28 (5) The amount of any net operating loss deduction
29 taken for federal income tax purposes under Section 172
30 of the Internal Revenue Code of 1986, as amended.

31 (c) *Adjustments decreasing federal taxable income.* —
32 There shall be subtracted from federal taxable income to
33 the extent included therein:

34 (1) Any gain from the sale or other disposition of
35 property having a higher fair market value on the first day
36 of July, one thousand nine hundred sixty-seven, than the
37 adjusted basis at said date for federal income tax purposes:
38 *Provided,* That the amount of this adjustment is limited to
39 that portion of any gain which does not exceed the differ-
40 ence between the fair market value and the adjusted basis;

41 (2) The amount of any refund or credit for overpay-
42 ment of income taxes and other taxes, including franchise
43 and excise taxes, which are based on, measured by, or
44 computed with reference to net income, imposed by this
45 state or any other taxing jurisdiction, to the extent proper-
46 ly included in gross income for federal income tax pur-
47 poses;

48 (3) The amount added to federal taxable income due
49 to the elimination of the reserve method for computation
50 of the bad debt deduction;

51 (4) The full amount of interest expense actually disal-
52 lowed in determining federal taxable income which was
53 incurred or continued to purchase or carry obligations or

54 securities of any state or of any political subdivision there-
55 of;

56 (5) The amount required to be added to federal tax-
57 able income as a dividend received from a foreign
58 (non-United States) corporation under Section 78 of the
59 Internal Revenue Code of 1986, as amended, by a corpo-
60 ration electing to take the foreign tax credit for federal
61 income tax purposes;

62 (6) The amount of salary expenses disallowed as a
63 deduction for federal income tax purposes due to claim-
64 ing the federal jobs credit under Section 51 of the Internal
65 Revenue Code of 1986, as amended;

66 (7) The amount included in federal adjusted gross
67 income by the operation of Section 951 of the Internal
68 Revenue Code of 1986, as amended;

69 (8) Employer contributions to medical savings ac-
70 counts established pursuant to section fifteen, article six-
71 teen, chapter thirty-three of this code to the extent includ-
72 ed in federal adjusted gross income for federal income tax
73 purposes less any portion of employer contributions with-
74 drawn for purposes other than payment of medical ex-
75 penses: *Provided*, That the amount subtracted pursuant to
76 this subsection for any one taxable year may not exceed
77 the maximum amount that would have been deductible
78 from the corporation's federal adjusted gross income for
79 federal income tax purposes if the aggregate amount of
80 the corporation's contributions to individual medical sav-
81 ings accounts established under section fifteen, article
82 sixteen, chapter thirty-three of this code had been contrib-
83 uted to a qualified plan as defined under the Employee
84 Retirement Income Security Act of 1974, as amended; and

85 (9) Any amount included in federal adjusted gross
86 income which is foreign source income. Foreign source
87 income includes:

88 (A) Interest and dividends, other than those derived
89 from sources within the United States;

90 (B) Rents, royalties, license and technical fees from
91 property located or services performed without the United

92 States or from any interest in the property, including rents,
93 royalties or fees for the use of or the privilege of using
94 without the United States any patents, copyrights, secret
95 process and formulas, good will, trademarks, trade brands,
96 franchises and other like properties; and

97 (C) Gains, profits or other income from the sale of
98 intangible or real property located without the United
99 States.

100 In determining the source of "foreign source income",
101 the provisions of Sections 861, 862 and 863 of the Inter-
102 nal Revenue Code of 1986, as amended, shall be applied.

103 (d) *Net operating loss deduction.* — Except as other-
104 wise provided in this subsection, there shall be allowed as a
105 deduction for the taxable year an amount equal to the
106 aggregate of: (1) The West Virginia net operating loss
107 carryovers to that year; plus (2) the net operating loss
108 carrybacks to that year: *Provided*, That no more than
109 three hundred thousand dollars of net operating loss from
110 any taxable year beginning after the thirty-first day of
111 December, one thousand nine hundred ninety-two, may be
112 carried back to any previous taxable year. For purposes of
113 this subsection, the term "West Virginia net operating loss
114 deduction" means the deduction allowed by this subsec-
115 tion, determined in accordance with Section 172 of the
116 Internal Revenue Code of 1986, as amended.

117 (1) *Special rules.* —

118 (A) When the corporation further adjusts its adjusted
119 federal taxable income under section seven of this article,
120 the West Virginia net operating loss deduction allowed by
121 this subsection shall be deducted after the section seven
122 adjustments are made;

123 (B) The tax commissioner shall prescribe the transi-
124 tion regulations as he deems necessary for fair and equita-
125 ble administration of this subsection as amended by this
126 act.

127 (2) *Effective date.* — The provisions of this subsec-
128 tion, as amended by chapter one hundred nineteen, acts of
129 the Legislature, one thousand nine hundred eighty-eight,

130 shall apply to all taxable years ending after the thirtieth
131 day of June, one thousand nine hundred eighty-eight; and
132 to all loss carryovers from taxable years ending on or
133 before said thirtieth day of June.

134 (e) *Special adjustments for expenditures for water and*
135 *air pollution control facilities.* —

136 (1) If the taxpayer so elects under subdivision (2) of
137 this subsection, there shall be:

138 (A) Subtracted from federal taxable income the total
139 of the amounts paid or incurred during the taxable year
140 for the acquisition, construction or development within
141 this state of water pollution control facilities or air pollu-
142 tion control facilities as defined in Section 169 of the
143 Internal Revenue Code; and

144 (B) Added to federal taxable income the total of the
145 amounts of any allowances for depreciation and amortiza-
146 tion of the water pollution control facilities or air pollution
147 control facilities, as so defined, to the extent deductible in
148 determining federal taxable income.

149 (2) The election referred to in subdivision (1) of this
150 subsection shall be made in the return filed within the time
151 prescribed by law (including extensions thereof) for the
152 taxable year in which the amounts were paid or incurred.
153 The election shall be made in that manner, and the scope
154 of application of that election shall be defined, as the tax
155 commissioner may by regulations prescribe, and shall be
156 irrevocable when made as to all amounts paid or incurred
157 for any particular water pollution control facility or air
158 pollution control facility.

159 (3) Notwithstanding any other provisions of this sub-
160 section or of section seven to the contrary, if the taxpayer's
161 federal taxable income is subject to allocation and appor-
162 tionment under section seven, the adjustments prescribed
163 in paragraphs (A) and (B), subdivision (1) of this subsec-
164 tion shall (instead of being made to the taxpayer's federal
165 taxable income before allocation and apportionment
166 thereof as provided in section seven) be made to the por-
167 tion of the taxpayer's net income, computed without re-

168 gard to the adjustments, allocated and apportioned to this
 169 state in accordance with section seven.

170 (f) *Allowance for certain government obligations and*
 171 *obligations secured by residential property.* — The West
 172 Virginia taxable income of a taxpayer subject to this arti-
 173 cle as adjusted in accordance with subsections (b), (c), (d)
 174 and (e) of this section shall be further adjusted by multi-
 175 plying the taxable income after the adjustment by said
 176 subsections by a fraction equal to one minus a fraction:

177 (1) The numerator of which is the sum of the average
 178 of the monthly beginning and ending account balances
 179 during the taxable year (account balances to be deter-
 180 mined at cost in the same manner that obligations, invest-
 181 ments and loans are reported on Schedule L of the Federal
 182 Form 1120) of the following:

183 (A) Obligations or securities of the United States, or
 184 of any agency, authority, commission or instrumentality
 185 of the United States and any other corporation or entity
 186 created under the authority of the United States Congress
 187 for the purpose of implementing or furthering an objec-
 188 tive of national policy;

189 (B) Obligations or securities of this state and any
 190 political subdivision or authority thereof;

191 (C) Investments or loans primarily secured by mort-
 192 gages, or deeds of trust, on residential property located in
 193 this state and occupied by nontransients; and

194 (D) Loans primarily secured by a lien or security
 195 agreement on residential property in the form of a mobile
 196 home, modular home or double-wide, located in this state
 197 and occupied by nontransients.

198 (2) The denominator of which is the average of the
 199 monthly beginning and ending account balances of the
 200 total assets of the taxpayer which are shown on Schedule L
 201 of Federal Form 1120, which are filed by the taxpayer
 202 with the Internal Revenue Service.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-1a. Premium rate increase requests; loss ratio requirement.

1 To be eligible to make a premium rate increase re-
2 quest after the first day of July, one thousand nine hun-
3 dred ninety-five, any insurer offering or which has in
4 force accident and sickness insurance policies which are
5 subject to the provisions of this article shall have a mini-
6 mum anticipated loss ratio of sixty-five percent as to such
7 policy form. In calculating its minimum anticipated loss
8 ratio, an insurer shall include in its actual incurred claims
9 the amount of premium taxes for the same experience
10 period which are attributable to the policy forms affected
11 by this section and which were paid to the state of West
12 Virginia pursuant to the provisions of article three of this
13 chapter.

§33-15-1b. Rates, individual major medical policies.

1 (a) No individual major medical coverage policy may
2 be approved by the commissioner for use in this state
3 unless:

4 (1) The premium rates for the policy, after adjustment
5 for any difference in policy benefits, which include, but
6 are not limited to, deductibles, copayments and levels of
7 care management, do not exceed by more than thirty
8 percent the premium rates charged by the same insurer on
9 any and all other individual major medical policies for
10 those individuals with similar characteristics and factors,
11 which the insurer has had approved by the commissioner
12 within a five-year period preceding the date of the new
13 policy filing by the insurer;

14 (2) The insurer files with the commissioner the opin-
15 ion of a qualified actuary or other person acceptable to
16 the commissioner which states:

17 (A) That the policy premium rate is in compliance
18 with subdivision (1) of this subsection; and

19 (B) That the anticipated loss ratio for the combined
20 experience of the policy taken together with all other
21 individual major medical coverage policies which the
22 insurer has had approved by the commissioner within a

23 five-year period preceding the date of the new policy
24 filing is equal to or greater than the loss ratio requirements
25 set forth in section one-a of this article.

26 (3) For a period of three years after the effective date
27 of this section, an insurer may have one or more policy
28 forms which exceed the one hundred thirty percent re-
29 quirement of subdivision (2) of this subsection: *Provided*,
30 That any rate schedule increase for such policy form shall
31 not exceed thirty-three and one-third percent of the rate
32 schedule increase for the lowest rate policy form. During
33 the final twelve months of this three year period, an insur-
34 er may request an extension of time for compliance from
35 the commissioner based on extenuating circumstances.

36 (b) An initial individual major medical policy form
37 may be disapproved by the commissioner if the commis-
38 sioner determines that the rates proposed by the insurer
39 for the policy form are set at a level substantially less than
40 rates charged by other insurers for comparable insurance
41 coverage.

42 (c) Nothing contained in this section may be con-
43 strued to prevent the use of age, sex, area, industry, occu-
44 pational, and avocational factors in setting premium rates
45 or to prevent the use of different rates after approval by
46 the commissioner for smokers and nonsmokers or for any
47 other habit or habits of an insured person which have a
48 statistically proven effect on the health of the person.
49 Nothing contained in this section shall preclude the estab-
50 lishment of a substandard classification based upon the
51 health condition of the insured: *Provided*, That the initial
52 classification may not be changed adversely to the insured
53 after the initial issuance of the policy.

54 (d) The commissioner has the right, upon application
55 by an insurer, and for good cause shown, to grant relief
56 from any requirement of this section.

§33-15-2. Scope and format of policy.

1 No policy of accident and sickness insurance shall be
2 delivered or issued for delivery to any person in this state
3 unless:

4 (a) The entire money and other considerations there-
5 for are expressed therein; and

6 (b) The time at which the insurance takes effect and
7 terminates is expressed therein; and

8 (c) It purports to insure only one person, except that a
9 policy may insure, originally or by subsequent amend-
10 ment upon the application of an adult member of a family
11 who shall be deemed the policyholder, any two or more
12 eligible members of that family, including husband, wife,
13 dependent children or any children under a specified age
14 which shall not exceed nineteen years and any other per-
15 son dependent upon the policyholder; and

16 (d) The policy is guaranteed to be renewable by the
17 insured unless there is fraud, nonpayment of premium, or
18 material misrepresentation by the insured in the applica-
19 tion for insurance and the misrepresentation has been
20 acted upon by the insurer within two years from the date
21 of the issuance of the policy. Notwithstanding the forego-
22 ing an insurer may request the commissioner to terminate
23 coverage. If the commissioner does not approve a request
24 for termination of coverage, then the insurer may termi-
25 nate the coverage but shall be prohibited from writing new
26 business on coverage of the type terminated in this state
27 for a period of five years from the date of notice to the
28 commissioner. The insurer shall provide notice to all af-
29 fected policyholders and the commissioner at least one
30 hundred twenty days prior to renewal. In the event of
31 nonrenewal, the commissioner and the insurer shall assist
32 policyholders regardless of geographic area, in finding
33 appropriate coverage without imposition of preexisting
34 coverage or benefit restrictions, if already satisfied, of the
35 form; and

36 (e) The style, arrangement and over-all appearance of
37 the policy give no undue prominence to any portion of
38 the text, and unless every printed portion of the text of the
39 policy and of any endorsements or attached papers is
40 plainly printed in light-faced type of a style in general use,
41 the size of which shall be uniform and not less than
42 ten-point with a lowercase unspaced alphabet length not
43 less than one hundred and twenty-point (the "text" shall

44 include all printed matter except the name and address of
 45 the insurer, name or title of the policy, the brief descrip-
 46 tion, if any, and captions and subcaptions), the policy shall
 47 clearly indicate on the first page the conditions of renew-
 48 ability; and

49 (f) The exceptions and reductions of indemnity are set
 50 forth in the policy and, except those which are set forth in
 51 sections four and five of this article, are printed, at the
 52 insurer's option, either included with the benefit provisions
 53 to which they apply, or under an appropriate caption such
 54 as "Exceptions," or "Exceptions and Reductions": *Provid-*
 55 *ed*, That if an exception or reduction specifically applies
 56 only to a particular benefit of the policy, a statement of
 57 such exception or reduction shall be included with the
 58 benefit provision to which it applies; and

59 (g) Each such form, including riders and endorse-
 60 ments, shall be identified by a form number in the lower
 61 left-hand corner of the first part thereof; and

62 (h) It contains no provision purporting to make any
 63 portion of the charter, rules, Constitution, or bylaws of the
 64 insurer a part of the policy unless such portion is set forth
 65 in full in the policy, except in the case of the incorpora-
 66 tion of, or reference to, a statement of rates or classifica-
 67 tion of risks, or short-rate table filed with the commission-
 68 er.

§33-15-4. Required policy provisions.

1 Except as provided in section six of this article, each
 2 such policy delivered or issued for delivery to any person
 3 in this state shall contain the provisions specified in this
 4 section in the words in which the same appear in this sec-
 5 tion: *Provided*, That the insurer may, at its option, substi-
 6 tute for one or more of such provisions corresponding
 7 provisions of different wording approved by the commis-
 8 sioner which are in each instance not less favorable in any
 9 respect to the insured or the beneficiary. Such provisions
 10 shall be preceded individually by the caption appearing in
 11 this section or, at the option of the insurer, by such appro-
 12 priate individual or group captions or subcaptions as the
 13 commissioner may approve.

14 (a) A provision as follows:

15 "Entire Contract; Changes: This policy, including the
16 endorsements and the attached papers, if any, constitutes
17 the entire contract of insurance. No change in this policy
18 shall be valid until approved by an executive officer of the
19 insurer and unless such approval be endorsed hereon or
20 attached hereto. No agent has authority to change this
21 policy or to waive any of its provisions."

22 (b) A provision as follows:

23 "Time Limit on Certain Defenses: (1) After two years
24 from the date of issue of this policy no misstatements,
25 except fraudulent misstatements, made by the applicant in
26 the application for such policy shall be used to void the
27 policy or to deny a claim for loss incurred or disability (as
28 defined in the policy) commencing after the expiration of
29 such two-year period."

30 The foregoing policy provision shall not be so con-
31 strued as to affect any legal requirement for avoidance of
32 a policy or denial of a claim during such initial two-year
33 period, nor to limit the application of subdivisions (a), (b),
34 (c), (d) and (e) of section five of this article in the event of
35 misstatement with respect to age or occupation or other
36 insurance. A policy which the insured has the right to
37 continue in force subject to its terms by the timely pay-
38 ment of premium (i) until at least age fifty, or (ii) in the
39 case of a policy issued after age forty-four, for at least five
40 years from its date of issue, may contain in lieu of the
41 foregoing the following provision (from which the clause
42 in parentheses may be omitted at the insurer's option)
43 under the caption "Incontestable" :

44 "After this policy has been in force for a period of two
45 years during the lifetime of the insured (excluding any
46 period during which the insured is disabled), it shall be-
47 come incontestable as to the statements contained in the
48 application.

49 (2) No claim for loss incurred or disability (as defined
50 in the policy) commencing after two years from the date
51 of issue of this policy shall be reduced or denied on the

52 ground that a disease or physical condition not excluded
53 from coverage by name or specific description effective
54 on the date of loss had existed prior to the effective date
55 of coverage of this policy."

56 (c) A provision as follows:

57 "Grace Period: A grace period of _____
58 (insert a number not less than '7' for weekly premium
59 policies, '10' for monthly premium policies and '31' for all
60 other policies) days will be granted for the payment of
61 each premium falling due after the first premium, during
62 which grace period the policy shall continue in force."

63 (d) A provision as follows:

64 "Reinstatement: If any renewal premium be not paid
65 within the time granted the insured for payment, as subse-
66 quent acceptance of premium by the insurer or by any
67 agent duly authorized by the insurer to accept such premi-
68 um, without requiring in connection therewith an applica-
69 tion for reinstatement, shall reinstate the policy: *Provided,*
70 That if the insurer or such agent requires an application
71 for reinstatement and issues a conditional receipt for the
72 premium tendered, the policy will be reinstated upon ap-
73 proval of such application by the insurer, or lacking such
74 approval, upon the forty-fifth day following the date of
75 such conditional receipt unless the insurer has previously
76 notified the insured in writing of its disapproval of such
77 application. The reinstated policy shall cover only loss
78 resulting from such accidental injury as may be sustained
79 after the date of reinstatement and loss due to such sick-
80 ness as may begin more than ten days after such date. In
81 all other respects the insured and insurer shall have the
82 same rights thereunder as they had under the policy im-
83 mediately before the due date of the defaulted premium,
84 subject to any provisions endorsed hereon or attached
85 hereto in connection with the reinstatement."

86 (e) A provision as follows:

87 "Notice of Claim: Written notice of claim must be
88 given to the insurer within twenty days after the occur-
89 rence or commencement of any loss covered by the poli-

90 cy, or as soon thereafter as is reasonably possible. Notice
91 given by or on behalf of the insured or the beneficiary to
92 the insurer at _____ (insert the loca-
93 tion of such office as the insurer may designate for the
94 purpose), or to any authorized agent of the insurer, with
95 information sufficient to identify the insured, shall be
96 deemed notice to the insurer."

97 In a policy providing a loss-of-time benefit which may
98 be payable for at least two years, an insurer may at its
99 option insert the following between the first and second
100 sentences of the above provision:

101 "Subject to the qualifications set forth below, if the
102 insured suffers loss of time on account of disability for
103 which indemnity may be payable for at least two years, he
104 shall, at least once in every six months after having given
105 notice of claim give to the insurer notice of continuance
106 of said disability, except in the event of legal incapacity.
107 The period of six months following any filing of proof by
108 the insured or any payment by the insurer on account of
109 such claim or any denial of liability, in whole or in part,
110 by the insurer shall be excluded in applying this provi-
111 sion. Delay in the giving of such notice shall not impair
112 the insured's right to any indemnity which would other-
113 wise have accrued during the period of six months preced-
114 ing the date on which such notice is actually given."

115 (f) A provision as follows:

116 "Claim Forms: The insurer, upon receipt of a notice of
117 claim, will furnish to the claimant such forms as are usual-
118 ly furnished by it for filing proofs of loss. If such forms
119 are not furnished within fifteen days after the giving of
120 such notice the claimant shall be deemed to have complied
121 with the requirements of this policy as to proof of loss
122 upon submitting, within the time fixed in the policy for
123 filing proofs of loss, written proof covering the occur-
124 rence, the character and the extent of the loss for which
125 claim is made."

126 (g) A provision as follows:

127 "Proof of Loss: Written proof of loss must be fur-

128 nished to the insurer at its said office in case of claim for
129 loss for which this policy provides any periodic payment
130 contingent upon continuing loss within ninety days after
131 the termination of the period for which the insurer is liable
132 and in case of claim for any other loss within ninety days
133 after the date of such loss. Failure to furnish such proof
134 within the time required shall not invalidate nor reduce
135 any claim if it was not reasonably possible to give proof
136 within such time, provided such proof is furnished as soon
137 as reasonably possible and in no event, except in the ab-
138 sence of legal capacity, later than one year from the time
139 proof is otherwise required."

140 (h) A provision as follows:

141 "Time of Payment of Claims: Indemnities payable
142 under this policy for any loss other than loss for which
143 this policy provides any periodic payment will be paid
144 immediately upon receipt of due written proof of such
145 loss. Subject to due written proof of loss, all accrued in-
146 demnities for loss for which this policy provides periodic
147 payment will be paid _____ (insert period for
148 payment which must not be less frequently than monthly)
149 and any balance remaining unpaid upon the termination
150 of liability will be paid immediately upon receipt of due
151 written proof."

152 (i) A provision as follows:

153 "Payment of Claims: Indemnity for loss of life will be
154 payable in accordance with the beneficiary designation
155 and the provisions respecting such payment which may be
156 prescribed herein and effective at the time of payment. If
157 no such designation or provision is then effective, such
158 indemnity shall be payable to the estate of the insured.
159 Any other accrued indemnities unpaid at the insured's
160 death may, at the option of the insurer, be paid either to
161 such beneficiary or to such estate. All other indemnities
162 will be payable to the insured."

163 The following provisions, or either of them, may be
164 included with the foregoing provisions at the option of the
165 insurer:

166 "If any indemnity of this policy shall be payable to the
167 estate of the insured, or to an insured or beneficiary who is
168 a minor or otherwise not competent to give a valid release,
169 the insurer may pay such indemnity, up to an amount not
170 exceeding \$_____ (insert an amount which shall not
171 exceed one thousand dollars), to any relative by blood or
172 connection by marriage of the insured or beneficiary who
173 is deemed by the insurer to be equitably entitled thereto.
174 Any payment made by the insurer in good faith pursuant
175 to this provision shall fully discharge the insurer to the
176 extent of such payment."

177 "Subject to any written direction of the insured in the
178 application or otherwise all or a portion of any indemni-
179 ties provided by this policy on account of hospital nurs-
180 ing, medical, or surgical services may, at the insurer's op-
181 tion and unless the insured requests otherwise in writing
182 not later than the time of filing proofs of such loss, be
183 paid directly to the hospital or person rendering such
184 services; but it is not required that the service be rendered
185 by a particular hospital or person."

186 (j) A provision as follows:

187 "Physical Examinations and Autopsy: The insurer at
188 its own expense shall have the right and opportunity to
189 examine the person of the insured when and as often as it
190 may reasonably require during the pendency of a claim
191 hereunder and to make an autopsy in case of death where
192 it is not forbidden by law."

193 (k) A provision as follows:

194 "Legal Actions: No action at law or in equity shall be
195 brought to recover on this policy prior to the expiration of
196 sixty days after written proof of loss has been furnished in
197 accordance with the requirements of this policy. No such
198 action shall be brought after the expiration of three years
199 after the time written proof of loss is required to be fur-
200 nished."

201 (l) A provision as follows:

202 "Change of Beneficiary: Unless the insured makes an
203 irrevocable designation of beneficiary, the right to change

204 of beneficiary is reserved to the insured and the consent of
205 the beneficiary or beneficiaries shall not be requisite to
206 surrender or assignment of this policy or to any change of
207 beneficiary or beneficiaries, or to any other changes in
208 this policy."

209 The first clause of this provision, relating to the irrevocable
210 designation of beneficiary, may be omitted at the
211 insurer's option.

§33-15-5. Optional policy provisions.

1 Except as provided in section six of this article, no
2 such policy delivered or issued for delivery to any person
3 in this state shall contain provisions respecting the matters
4 set forth below unless such provisions are in the words in
5 which the same appear in this section: *Provided*, That the
6 insurer may, at its option, use in lieu of any such provision
7 a corresponding provision of different wording approved
8 by the commissioner which is not less favorable in any
9 respect to the insured or the beneficiary. Any such provi-
10 sion contained in the policy shall be preceded individually
11 by the appropriate caption appearing in this section or, at
12 the option of the insurer, by such appropriate individual
13 or group captions or subcaptions as the commissioner
14 may approve.

15 (a) A provision as follows:

16 "Change of Occupation: If the insured be injured or
17 contract sickness after having changed his occupation to
18 one classified by the insurer as more hazardous than that
19 stated in this policy or while doing for compensation any-
20 thing pertaining to an occupation so classified, the insurer
21 will pay only such portion of the indemnities provided in
22 this policy as the premium paid would have purchased at
23 the rates and within the limits fixed by the insurer for such
24 more hazardous occupation. If the insured changes his
25 occupation to one classified by the insurer as less hazard-
26 ous than that stated in this policy, the insurer, upon receipt
27 of proof of such change of occupation, will reduce the
28 premium rate accordingly, and will return the excess pro
29 rata unearned premium from the date of change of occu-
30 pation or from the policy anniversary date immediately

31 preceding receipt of such proof, whichever is the more
32 recent. In applying this provision, the classification of
33 occupational risk and the premium rates shall be such as
34 have been last filed by the insurer prior to the occurrence
35 of the loss for which the insurer is liable or prior to date of
36 proof of change in occupation with the state official hav-
37 ing supervision of insurance in the state where the insured
38 resided at the time this policy was issued; but if such filing
39 was not required, then the classification of occupational
40 risk and the premium rates shall be those last made effec-
41 tive by the insurer in such state prior to the occurrence of
42 the loss or prior to the date of proof of change in occupa-
43 tion."

44 (b) A provision as follows:

45 "Misstatement of Age: If the age of the insured has
46 been misstated, all amounts payable under this policy shall
47 be such as the premium paid would have purchased at the
48 correct age."

49 (c) A provision as follows:

50 "Other Insurance in This Insurer: If an accident or
51 sickness or accident and sickness policy or policies previ-
52 ously issued by the insurer to the insured be in force con-
53 currently herewith, making the aggregate indemnity for
54 _____ (insert type of coverage or coverages) in
55 excess of \$ _____ (insert maximum limit of in-
56 demnity or indemnities) the excess insurance shall be void
57 and all premiums paid for such excess shall be returned to
58 the insured or to his estate."

59 Or, in lieu thereof:

60 "Insurance effective at any one time on the insured
61 under a like policy or policies in this insurer is limited to
62 the one such policy elected by the insured, his beneficiary
63 or his estate, as the case may be, and the insurer will return
64 all premiums paid for all other such policies."

65 Provided that no policy hereafter issued for delivery in
66 this state which provides, with or without other benefits, for
67 the payment of benefits or reimbursement for expenses
68 with respect to hospitalization, nursing care, medical or

69 surgical examination or treatment, or ambulance transpor-
70 tation shall contain any provision for a reduction of such
71 benefits or reimbursement, or any provision for avoidance
72 of the policy, on account of other insurance of such na-
73 ture carried by the same insured with the same or another
74 insurer.

75 (d) A provision as follows:

76 "Insurance with Other Insurers: If there be other valid
77 coverage, not with this insurer, providing benefits for the
78 same loss on other than an expense incurred basis and of
79 which this insurer has not been given written notice prior
80 to the occurrence or commencement of loss, the only
81 liability for such benefits under this policy shall be for
82 such proportion of the indemnities otherwise provided
83 hereunder for such loss as the like indemnities of which
84 the insurer had notice (including the indemnities under
85 this policy) bear to the total amount of all like indemnities
86 for such loss, and for the return of such portion of the
87 premium paid as shall exceed the pro rata portion for the
88 indemnities thus determined."

89 The insurer may, at its option, include in this provision
90 a definition of "other valid coverage," approved as to form
91 by the commissioner, which definitions shall be limited in
92 subject matter to coverage provided by organizations
93 subject to regulations by insurance law or by insurance
94 authorities of this or any other state of the United States or
95 any province of Canada, and to any other coverage the
96 inclusion of which may be approved by the commissioner.
97 In the absence of such definition such term shall not in-
98 clude group insurance, or benefits provided by union
99 welfare plans or by employer or employee benefit organi-
100 zations. For the purpose of applying the foregoing policy
101 provisions with respect to any insured any amount of
102 benefit provided for such insured pursuant to any com-
103 pulsory benefit statute (including any workers' compensa-
104 tion or employer's liability statute) whether provided by a
105 governmental agency or otherwise shall in all cases be
106 deemed to be "other valid coverage" of which the insurer
107 has had notice. In applying the foregoing policy provision
108 no third party liability coverage shall be included as "other

109 valid coverage."

110 (e) A provision as follows:

111 "Relation of Earnings to Insurance: If the total month-
112 ly amount of loss of time benefits promised for the same
113 loss under all valid loss of time coverage upon the insured,
114 whether payable on a weekly or monthly basis, shall ex-
115 ceed the monthly earnings of the insured at the time dis-
116 ability commenced or his average monthly earnings for
117 the period of two years immediately preceding a disability
118 for which claim is made, whichever is the greater, the in-
119 surer will be liable only for such proportionate amount of
120 such benefits under this policy as the amount of such
121 monthly earnings or such average monthly earnings of the
122 insured bears to the total amount of monthly benefits for
123 the same loss under all such coverage upon the insured at
124 the time such disability commences and for the return of
125 such part of the premiums paid during such two years as
126 shall exceed the pro rata amount of the premiums for the
127 benefits actually paid hereunder; but this shall not operate
128 to reduce the total monthly amount of benefits payable
129 under all such coverage upon the insured below the sum
130 of two hundred dollars or the sum of the monthly benefits
131 specified in such coverages, whichever is the lesser, nor
132 shall it operate to reduce benefits other than those payable
133 for loss of time."

134 The insurer may, at its option, include in this provision
135 a definition of "valid loss of time coverage," approved as
136 to form by the commissioner, which definition shall be
137 limited in subject matter to coverage provided by govern-
138 mental agencies or by organizations subject to regulation
139 by insurance law or by insurance authorities of this or any
140 other state of the United States or any province of Canada,
141 or to any other coverage the inclusion of which may be
142 approved by the commissioner or any combination of
143 such coverages. In the absence of such definition such
144 term shall not include any coverage provided for such
145 insured pursuant to any compulsory benefit statute (in-
146 cluding any workers' compensation or employer's liability
147 statute), or benefits provided by union welfare plans or by
148 employer or employee benefit organizations.

149 (f) A provision as follows:

150 "Unpaid Premium: Upon the payment of a claim un-
151 der this policy, any premiums then due and unpaid or
152 covered by any note or written order may be deducted
153 therefrom."

154 (g) A provision as follows:

155 "Return of Premium on Cancellation: If the insured
156 cancels this policy, the earned premium shall be computed
157 by the use of the short-rate table last filed with the state
158 official having supervision of insurance in the state where
159 the insured resided when the policy was issued. Cancell-
160 ation shall be without prejudice to any claim originating
161 prior to the effective date of cancellation."

162 (h) A provision as follows:

163 "Conformity with State Statutes: Any provision of this
164 policy which, on its effective date, is in conflict with the
165 statutes of the state in which the insured resides on such
166 date is hereby amended to conform to the minimum re-
167 quirements of such statutes."

168 (i) A provision as follows:

169 "Illegal Occupation: The insurer shall not be liable for
170 any loss to which a contributing cause was the insured's
171 commission of or attempt to commit a felony or to which
172 a contributing cause was the insured's being engaged in an
173 illegal occupation."

174 (j) A provision as follows:

175 "Intoxicants and Narcotics: The insurer shall not be
176 liable for any loss sustained or contracted in consequence
177 of the insured's being intoxicated or under the influence
178 of any narcotic unless administered on the advice of a
179 physician."

**§33-15-20. Individual medical savings accounts; definitions;
ownership; trustees; regulations.**

1 (a) Any individual resident of this state may establish a
2 medical savings account to serve as self-insurance for the

3 payment of medical expenses. As used in this section
4 "individual medical savings account" means a trust for the
5 payment of medical expenses created or organized for the
6 exclusive benefit of an individual, his or her children and
7 dependents, and his or her beneficiaries: *Provided*, That
8 an individual establishing a medical savings account may
9 designate a percentage of the account that may be with-
10 drawn by the individual if not needed for medical expens-
11 es of the individual, his or her children or other depen-
12 dents and his or her beneficiaries: *Provided, however*,
13 That any amount remaining in a medical savings account
14 on the earlier of the date of retirement, at the age of
15 fifty-nine and one-half years or more, of the individual
16 who established the account, or the date of death of that
17 individual, may be withdrawn by the individual or by his
18 or her personal representative for a purpose *other* than the
19 payment of medical expenses: *Provided further*, That any
20 withdrawal for a purpose other than to pay medical ex-
21 penses as provided in this section shall be added to the
22 federal adjusted gross income of the payee or distributee
23 for purposes of calculating West Virginia adjusted gross
24 income: *And provided further*, That no withdrawal pursu-
25 ant to this subsection shall be subject to the additional
26 twenty percent tax as provided in subsection (d) of this
27 section. "Medical expenses" means amounts paid for ser-
28 vices for the diagnosis, cure, mitigation, treatment, or pre-
29 vention of disease, or for the purpose of affecting any
30 structure or function of the body, which expenses may be
31 included in calculating the federal deduction for medical
32 and dental expenses for federal income tax purposes; for
33 insurance premiums for combined plans issued pursuant
34 to this section; but excluding expenses for cosmetic sur-
35 gery as defined in Section 213 of the Internal Revenue
36 Code of 1986, as amended. Funds in an individual medi-
37 cal savings account may not be used for payment of medi-
38 cal expenses which any third-party payor is obligated to
39 pay, except for expenses of a medicaid-eligible individual
40 covered under the state's medicaid program. The interest
41 of an individual in a medical savings account established
42 for his or her benefit pursuant to this section shall be non-
43 forfeitable.

44 (b) The trustee for an individual medical savings ac-
45 count shall be a bank or other entity qualified as a trustee
46 of individual retirement accounts under Section 408 of the
47 Internal Revenue Code of 1986, as amended. An insurer
48 qualified under the Internal Revenue Code, of 1986, as
49 amended, may act as trustee. The assets of the trust shall
50 not be commingled with other property except in a com-
51 mon trust fund or common investment fund. A trustee
52 who is an insurer may hold the assets of individuals in-
53 sured under individual accident and sickness plans in a
54 common fund for the account of all individuals who have
55 an interest in the trust, if there is a separate accounting for
56 the interest of each individual or member.

57 (c) Any insurer issuing accident and sickness policies
58 in this state in accordance with the provisions of this article
59 may offer a benefit plan including deductibles or copay-
60 ments combined with individual self-insurance through
61 the establishment of individual medical savings accounts.
62 A benefit plan established pursuant to this subsection shall
63 provide that medical expenses included within deductible
64 or copayment provisions of the accident and sickness
65 policy for the individual or for his or her covered depen-
66 dents and therefore not payable under that policy be paid
67 by the trustee, either directly or as reimbursement to an
68 individual who has previously paid medical expenses,
69 from the individual medical savings investment account. A
70 benefit plan may limit payment of medical expenses until
71 the group plan annual deductible is met from the medical
72 savings account to expenses which are covered services
73 under the policy.

74 (d) The insurance commissioner shall promulgate
75 legislative rules pursuant to article three, chapter twenty-
76 nine-a of this code to establish specific standards for indi-
77 vidual medical savings accounts and for plans in which a
78 policy of insurance is combined with self-insurance under
79 an individual medical savings account. Such standards
80 shall be in addition to and in accordance with the applica-
81 ble laws of this state and may cover, but shall not be limit-
82 ed to:

83 (1) Definitions of terms;

84 (2) An annual contribution minimum for individual
85 medical savings accounts;

86 (3) An annual contribution maximum for individual
87 medical savings accounts;

88 (4) Limitations upon an individual's access to or use of
89 individual medical savings account funds and circum-
90 stances under which funds in the account may be dis-
91 bursed: *Provided*, That if, during any taxable year, the
92 beneficial owner of an individual medical savings account
93 borrows any money under or by use of that account, the
94 account ceases to be an individual medical savings account
95 as of the first day of that taxable year: *Provided, however*,
96 That any amount paid or distributed out of a medical
97 savings account for any purpose other than to defray
98 medical expenses as provided in this section shall be add-
99 ed to the federal adjusted gross income of the payee or
100 distributee for purposes of calculating West Virginia ad-
101 justed gross income: *Provided further*, That the payee's or
102 distributee's tax under this article for the taxable year in
103 which the amount is received, except as specifically pro-
104 vided in subsection (a) of this section or except for a dis-
105 tribution of account assets pursuant to order of a federal
106 bankruptcy court, shall be increased by an amount equal
107 to ten percent of the portion of the payment or distribu-
108 tion that is includible in the payee's or distributee's federal
109 adjusted gross income;

110 (5) Circumstances under which a combined benefit
111 plan offered through an insurer may permit reduced con-
112 tributions to the individual medical savings account, which
113 circumstances may include the accruing of a specified
114 account balance;

115 (6) Provisions relating to reporting payments for the
116 benefit of an individual from an individual medical sav-
117 ings account for medical expenses to an insurer offering a
118 combined benefit plan; and

119 (7) Provisions relating to change or redesignation of a
120 trustee.

121 (e) The tax commissioner is authorized to establish

122 penalties for early or unauthorized withdrawals from indi-
 123 vidual medical savings accounts pursuant to rules promul-
 124 gated pursuant to article three, chapter twenty-nine-a of
 125 this code, which penalties may not exceed federal penalties
 126 for early or unauthorized withdrawals from individual
 127 retirement accounts under the Internal Revenue Code of
 128 1986, as amended.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-15. Individual medical savings accounts; definitions; ownership; contributions; trustees; regulations.

1 (a) Any insurer issuing group accident and sickness
 2 policies in this state, the public employees insurance agen-
 3 cy and any employer offering a health benefit plan pursu-
 4 ant to the Employee Retirement Income Security Act of
 5 1974, as amended may offer a benefit plan including
 6 deductibles or copayments combined with employee
 7 self-insurance through the establishment of individual
 8 medical savings accounts. As used in this section "individ-
 9 ual medical savings account" means a trust for the pay-
 10 ment of medical expenses created or organized for the
 11 exclusive benefit of an individual, his or her dependents
 12 covered under a group accident and sickness policy, and
 13 his or her beneficiaries: *Provided*, That an employee es-
 14 tablishing a medical savings account, or for whom a medi-
 15 cal savings account is established by an employer, may
 16 designate a percentage of the employee's contributions, if
 17 any, to that account that may be withdrawn by the em-
 18 ployee if not needed for medical expenses of the employ-
 19 ee, his or her children or other dependents and his or her
 20 beneficiaries: *Provided, however*, That any amount re-
 21 maining in a medical savings account on the earlier of the
 22 date of retirement, at the age of fifty-nine and one-half
 23 years or more, of the employee or the date of death of the
 24 employee, may be withdrawn by the employee or by his
 25 or her personal representative for a purpose other than the
 26 payment of medical expenses: *Provided further*, That any
 27 withdrawal for a purpose other than to pay medical ex-
 28 penses as provided in this section shall be added to the
 29 federal adjusted gross income of the payee or distributee:
 30 *And provided further*, That no withdrawal pursuant to this

31 subsection shall be subject to the additional twenty percent
32 tax as provided in subsection (d) of this section. "Medical
33 expenses" means amounts paid for services for the diagno-
34 sis, cure, mitigation, treatment, or prevention of disease, or
35 for the purpose of affecting any structure or function of
36 the body, which expenses may be included in calculating
37 the federal deduction for medical and dental expenses for
38 federal income tax purposes; for insurance premiums for
39 combined plans issued pursuant to this section; but ex-
40 cluding expenses for cosmetic surgery as defined in Sec-
41 tion 213 of the Internal Revenue Code of 1986, as amend-
42 ed. Funds in an individual medical savings account may
43 not be used for payment of medical expenses which any
44 third-party payor is obligated to pay, except for medical
45 expenses of a medicaid-eligible individual covered under
46 the state's medicaid program. A benefit plan established
47 pursuant to this section shall provide that medical expendi-
48 tures included within deductible or copayment provisions of
49 the group accident and sickness policy and therefore not
50 payable under the group policy for the employee or for
51 his or her covered dependents be paid by the trustee, ei-
52 ther directly or as reimbursement to an employee who has
53 previously paid medical expenses, from the individual
54 medical savings account. A benefit plan may limit pay-
55 ment of medical expenses until the group plan annual
56 deductible is met from the medical savings account to
57 expenses which are covered services under the group poli-
58 cy.

59 (b) The interest of an employee in a medical savings
60 account established for his or her benefit pursuant to this
61 section shall be nonforfeitable.

62 (c) The trustee for an individual medical savings ac-
63 count shall be a bank or other entity qualified as a trustee
64 of individual retirement accounts under Section 408 of the
65 Internal Revenue Code of 1986, as amended. An insurer
66 so qualified may act as trustee. The assets of the trust shall
67 not be commingled with other property except in a com-
68 mon trust fund or common investment fund. The trustee
69 may hold the assets of employees insured under a group
70 accident and sickness plan in a common fund for the
71 account of all individuals who have an interest in the trust,

72 if there is a separate accounting for the interest of each
73 employee or member. Combined plans are subject to the
74 protections afforded by article twenty-six-a of this chap-
75 ter.

76 (d) The insurance commissioner shall promulgate
77 legislative rules pursuant to article three chapter
78 twenty-nine-a of this code to establish specific standards
79 for plans in which a group policy is combined with
80 self-insurance under an individual medical savings ac-
81 count. These standards shall be in addition to and in ac-
82 cordance with the applicable laws of this state and may
83 cover, but shall not be limited to:

84 (1) Definitions of terms;

85 (2) An annual contribution minimum for individual
86 medical savings accounts;

87 (3) An annual contribution maximum for individual
88 medical savings accounts;

89 (4) Limitations which a plan may impose upon an
90 employee's access to or use of individual medical savings
91 account funds and circumstances under which funds in the
92 account may be disbursed: *Provided*, That if, during any
93 taxable year, the beneficial owner of an individual medical
94 savings account borrows any money under or by use of
95 that account, the account ceases to be an individual medi-
96 cal savings account as of the first day of that taxable year:
97 *Provided, however*, That any amount paid or distributed
98 out of a medical savings account for any purpose other
99 than to defray medical expenses as provided in this section
100 shall be added to the federal adjusted gross income of the
101 payee or distributee for purposes of calculating West Vir-
102 ginia adjusted gross income: *Provided further*, That the
103 payee's or distributee's tax under this article for the taxable
104 year in which the amount is received except as specifically
105 provided in subsection (a) of this section or except for a
106 distribution of account assets pursuant to order of a feder-
107 al bankruptcy court, shall be increased by an amount
108 equal to ten percent of the portion of the payment or
109 distribution that is includible in the payee's or distributee's
110 federal adjusted gross income;

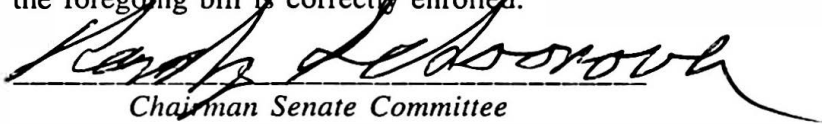
111 (5) Circumstances under which a plan may permit
112 reduced contributions to the individual medical savings
113 account, which circumstances may include the accruing of
114 a specified account balance;

115 (6) Provisions relating to reporting payments for the
116 benefit of an employee from an individual medical sav-
117 ings account for medical expenses to the group policy
118 insurer; and

119 (7) Provisions relating to change or redesignation of a
120 trustee and provisions relation to circumstances requiring
121 or permitting continuation of coverage by the group plan
122 or conversion to an individual medical savings account
123 upon termination of an employee's employment.

124 (e) The tax commissioner is authorized to establish
125 penalties for early or unauthorized withdrawals from indi-
126 vidual medical savings accounts pursuant to rules promul-
127 gated in accordance with article three, chapter twenty-
128 nine-a of this code, which penalties may not exceed feder-
129 al penalties for early or unauthorized withdrawals from
130 individual retirement accounts under the Internal Revenue
131 Code of 1986, as amended.

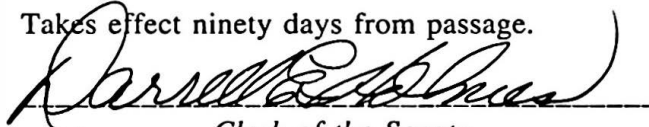
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within _____ this the _____
day of _____, 1995.

Governor



PRESENTED TO THE
GOVERNOR

Date

3/24/95

Time

3:58 PM