WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED
Committee Substitute for
SENATE BILL NO. 327

(By Senator Wagner)

PASSED March 9, 1995
In Effect 90 days from Passage
AN ACT to amend and reenact sections two, three and four, article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excluding accident and sickness disability insurance from the definition of limited benefits accident and sickness insurance policies and certificates; and to amend the refund requirements for limited benefits policies and certificates.

Be it enacted by the Legislature of West Virginia:

That sections two, three and four, article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16E. LIMITED BENEFITS ACCIDENT AND SICKNESS INSURANCE POLICIES AND CERTIFICATES.

§33-16E-2. Definitions.
For purposes of this article:

(a) "Limited benefits policy or certificate" means any individual or group accident and sickness insurance policy that is not required to offer or provide all benefits mandated by any other applicable provision of this chapter. Such policies include, but are not limited to, accident only, sickness only disability, sickness only, accident only disability, hospital indemnity, specified disease and travel accident insurance policies: Provided, That the following types of policies and certificates are excluded from the definition of "limited benefits policy or certificate" for purposes of this article:

1. Credit accident and sickness insurance;
2. Long-term care insurance;
3. Medicare supplement insurance; and
4. Minimum benefits accident and sickness insurance issued pursuant to section fifteen, article fifteen of this chapter or article sixteen-c of this chapter;
5. Accident and sickness policies which provide benefits for loss of income due to disability;
6. Major medical policies;
7. Dental policies; and
8. Vision policies.

(b) "Experience period" means the period beginning on the first day of the calendar year during which a premium rate first takes effect and ending on the last day of the calendar year during which the insurer earns five hundred thousand dollars in premiums on the form in West Virginia or, if the annual premium earned on the form in West Virginia is less than five hundred thousand dollars, earns nationally.

(c) "Successive experience period" means the experience period beginning on the first day following the end
of the preceding experience period.

(d) "Annual loss ratio" is the ratio of earned premium received by the insurer on a given form during the experience period compared to the incurred losses paid out by the insurer on the same form during the same experience period and expressed in percentage of earned premiums paid out.

§33-16E-3. Premium rate increase requests; loss ratio requirements.

(a) To be eligible to make a premium rate increase request after the first day of July, one thousand nine hundred ninety-three, any insurer offering a limited benefits policy form or certificate form in West Virginia which was not delivered or issued for delivery in West Virginia prior to the effective date of this article shall be expected to return to policyholders and certificateholders in the form of five-year aggregate loss ratios under the policy form or certificate form:

(1) At least seventy-five percent of the earned premiums in the case of a group policy or certificate; and

(2) At least sixty-five percent of the earned premiums in the case of an individual policy.

(b) To be eligible to make a premium rate increase request after the first day of July, one thousand nine hundred ninety-three, any insurer renewing a limited benefits policy form or certificate form which was in force in West Virginia on the effective date of this article, shall be expected to return to policyholders and certificateholders in the form of annual loss ratios under the policy or certificate a percentage of the earned premium which is equal to the anticipated loss ratio originally filed with the insurance commissioner.

(c) With respect to a policy form or certificate form which has been offered by an insurer in West Virginia or nationally for five years or less the insurer may use the
anticipated loss ratio filed with and approved by the commissioner for that form to determine compliance with the requirements of this section.

(d) For purposes of this section, limited benefits policies and certificates issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

§33-16E-4. Premium refunds; calculation of refunds; payments.

(a) Beginning on the first day of July, one thousand nine hundred ninety-four, any insurer offering a limited benefits policy or certificate which was not delivered or issued for delivery in West Virginia prior to the effective date of this article shall make premium refunds to policyholders and certificateholders if it fails to return to such policyholders and certificateholders in the form of annual loss ratios under the policy or certificate:

(1) At least sixty-five percent of the earned premiums in the case of a group policy or certificate; and

(2) At least fifty-five percent of the earned premiums in the case of an individual policy.

(b) Any insurer offering a limited benefits policy or certificate which was in force in West Virginia on the effective date of this article, shall make premiums refunds to policyholders and certificateholders if it fails to return to such policyholders and certificateholders in the form of annual loss ratios under the policy or certificate a percentage of the earned premium which is the anticipated loss ratio originally filed by the insurer with the insurance commissioner less five percent.

(c) With respect to a policy form or certificate form which has been in force or offered by an insurer either in West Virginia or nationally for more than five years, refunds to West Virginia policyholders or certifi-
cateholders made pursuant to the requirements of this
section and based upon annual earned premium volume
in West Virginia shall be calculated by multiplying the
anticipated loss ratio by the applicable earned premium
during the experience period and subtracting from that
result the actual incurred claims during the experience
period.

(d) With respect to a policy form or certificate form
which has been in force or offered by an insurer for more
than five years, refunds to West Virginia policyholders or
certificateholders made pursuant to the requirements of
this section and based upon national annual earned
premium volume shall be calculated by:

(1) Multiplying the mandated loss ratio by the applica-
able earned premium during the experience period and
subtracting from that result the actual incurred claims
during the experience period; and

(2) Multiplying the results of subdivision (1) of this
subsection by the total earned premium during the
experience period from all West Virginia policyholders
or certificateholders eligible for refunds; and

(3) Dividing the results of subdivision (2) of this
subsection by the total earned premium during that
period in all states on the policy form.

(e) With respect to a policy form or certificate form
which has been offered by an insurer in West Virginia or
nationally for five years or less, the insurer may use the
anticipated loss ratio filed with and approved by the
commissioner to determine the amount of premium
refunds, if any, that must be made pursuant to subsec-
tion (a) of this section.

(f) Refunds shall be made to all West Virginia policy-
holders and certificateholders who are insured under the
applicable policy form or certificate as of the last day of
the experience period. Such refund shall include inter-
est, at the current accident and health reserve interest
rate established by the national association of insurance commissioners, from the end of the experience period until the date of payment. Payment shall be made during the third quarter of the year following the experience period for which a refund is determined to be due.

(g) Refunds of less than ten dollars shall be aggregated and held by the insurer in a policyholders' and certificateholders' liability fund and shall be used to offset any future rate increases.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 17th day of March 1995.

Governor