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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4259

(By Mr. Speaker, Mr. Kiss, and Delegates Beane,
L. White, Thompson, Faircloth and Johnson)



Passed March 14, 1998

In Effect Ninety Days from Passage

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H. B. 4259

(BY MR. SPEAKER, MR. KISS, AND DELEGATES
BEANE, L. WHITE, THOMPSON, FAIRCLOTH AND JOHNSON)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the regulation of limited benefits insurance policies; providing definitions; providing limitations on premium rate increases; providing for premium corrections; providing for the amount and timing of premium corrections; requiring reports to the commissioner; providing for civil penalties; requiring notice of cancellation or nonrenewal; providing requirements for limited benefits policy provisions; allowing the insurance commissioner to prevent an insurer from avoiding premium correction requirements by offering a new form of policy or certificate; and requiring a report to the Legislature by the commissioner.

Be it enacted by the Legislature of West Virginia:

That 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-1. Scope of article.

1 The provisions of this article apply to all limited
2 benefits policies and certificates delivered or issued for
3 delivery in this state after the ninth day of July, one
4 thousand nine hundred ninety-three.

§33-16E-2. Definitions.

1 For purposes of this article:

2 (a) "Limited benefits policy" means any individual
3 or group accident and sickness insurance policy, including
4 all riders thereto (and certificates in the case of a group
5 policy), that covers one or more residents of this state and
6 that is not required to offer or provide all benefits
7 mandated by any other applicable provision of this
8 chapter. Such policies include, but are not limited to,
9 accident only, sickness only disability, sickness only,
10 accident only disability, hospital indemnity, specified
11 disease and travel accident insurance policies: *Provided,*
12 That the following types of policies and certificates are
13 excluded from the definition of "limited benefits policy":

14 (1) Credit accident and sickness insurance;

15 (2) Long-term care insurance;

16 (3) Medicare supplement insurance;

17 (4) Minimum benefits accident and sickness insurance
18 issued pursuant to section fifteen, article fifteen of this
19 chapter or article sixteen-c of this chapter;

20 (5) Accident and sickness policies which provide
21 benefits for loss of income due to disability;

22 (6) Major medical policies;

23 (7) Dental policies; and

24 (8) Vision policies.

25 (b) "Limited benefits form" means a compilation of
26 policy terms that has been approved by the commissioner
27 for use as a prototype for limited benefits policies, or a
28 compilation of policy terms that has been used as the
29 prototype for one or more limited benefits policies,
30 regardless of whether that compilation has been approved

31 by the commissioner. The existence of a form may be
32 inferred from the existence of one or more policies that
33 do not conform to any form that has been approved by
34 the commissioner. Limited benefits forms that are used by
35 a particular insurer and that, in the opinion of the
36 commissioner, are substantially identical with respect to
37 the risks covered and benefits provided shall be regarded
38 as a single limited benefits form.

39 (c) "Insurer" means an insurer that offers or has in
40 force any limited benefits policies.

41 (d) "Correction date" means the thirty-first day of
42 December of the year one thousand nine hundred ninety-
43 nine and of every third year thereafter.

44 (e) "Incurred claims" for a particular limited benefits
45 form during a particular period of time means the
46 aggregate amount of all claims incurred during that
47 period on all limited benefits policies based on that form,
48 regardless of when individual claims are paid: *Provided*,
49 That if both West Virginia residents and residents of one
50 or more other states are covered under a group limited
51 benefits policy, only claims incurred on behalf of West
52 Virginia residents shall be taken into account in
53 determining the amount of claims incurred on the policy.

54 (f) "Earned premiums" for a particular limited benefits
55 form during a particular period of time means the
56 aggregate amount all premiums earned during that period
57 on all policies based on that form, regardless of when
58 specific premiums are paid: *Provided*, That if both West
59 Virginia residents and residents of one or more other
60 states are covered under group limited benefits policy,
61 only premiums earned for coverage extended to West
62 Virginia residents shall be taken into account in
63 determining the amount of premiums earned on the
64 policy.

65 (g) "Net level premium" for a particular limited
66 benefits form means a hypothetical premium per limited
67 benefits policy that is of such amount that, over the
68 lifetime of the limited benefits policy beginning at the
69 time of issue of the policy, the present value of the net

70 level premiums for the policy equals the present value of
71 the claims expected to be incurred on the policy. The net
72 level premium shall be determined using the same
73 assumptions as are used in pricing calculations, with
74 appropriate provision for adverse deviation.

75 (h) "Net level premium reserve" means a reserve
76 calculated so that at any point in time the reserve amount
77 is the present value of benefits expected to be incurred in
78 the future minus the present value of future net level
79 premiums.

80 (i) "Modified net level premium reserve" means net
81 level premium reserve reduced by the investment income
82 component of such reserve.

§33-16E-3. Identification of level premium limited benefits forms.

1 (a) A limited benefits form shall be regarded as a level
2 premium limited benefits form only if the form has been
3 identified as provided in this section.

4 (b) On or before the first day of December, one
5 thousand nine hundred ninety-eight, each insurer shall
6 identify, in writing to the commissioner, those limited
7 benefits forms approved by the commissioner (pursuant to
8 section eight, article six of this chapter) prior to the first
9 day of July, one thousand nine hundred ninety-eight, that
10 are level premium limited benefits forms.

11 (c) An insurer submitting a form to the commissioner
12 for approval (pursuant to section eight, article six of this
13 chapter) after the first day of July, one thousand nine
14 hundred ninety-eight, shall clearly indicate, in the written
15 documents filed with the commissioner to submit the
16 form, that the form is a level premium limited benefits
17 form.

18 (d) An insurer using a form that is not subject to prior
19 approval by the commissioner shall identify the form as a
20 level premium limited benefits form, in writing to the
21 commissioner:

22 (1) On or before the first day of December, one
23 thousand nine hundred ninety-eight, if at least one policy
24 based on the form was delivered or issued for delivery in
25 this state prior to the first day of July, one thousand nine
26 hundred ninety-eight; or

27 (2) Within six months of the first instance in which a
28 policy is delivered or issued for delivery in this state, if no
29 such policies were delivered or issued for delivery in West
30 Virginia prior to the first day of July, one thousand nine
31 hundred ninety-eight.

32 (e) A limited benefits form that is subject to prior
33 approval by the commissioner and that has not been so
34 approved shall not be regarded as a level premium limited
35 benefits form.

§33-16E-4. Premium rate increases.

1 (a) The commissioner may not approve a premium
2 rate increase for a limited benefits form unless the form is
3 expected, over its lifetime and given the rate increase, to
4 return at least seventy-five percent (in the case of a group
5 form) or sixty-five percent (in the case of an individual
6 form) of its earned premiums to policyholders and
7 certificate holders as incurred claims: *Provided*, That for
8 purposes of this requirement, any premium refunds that
9 have been paid for the form pursuant to this article shall
10 be regarded as incurred claims. At the request of an
11 insurer, the commissioner may apply a minimum
12 percentage that is less than the applicable percentage
13 otherwise provided in this subsection if the insurer
14 demonstrates to the satisfaction of the commissioner that
15 special circumstances justify the use of that lesser
16 percentage in order to allow the insurer a reasonable profit
17 on policies based on the form. Special circumstances
18 include, but are not limited to:

19 (1) The cost of developing the form is unusually high;
20 or

21 (2) The expenses of marketing or administering the
22 form are unusually high; or

23 (3) The form covers unusual risks or incorporates
24 unique features.

25 (b) For purposes of this article, the following shall be
26 treated as individual limited benefits forms:

27 (1) Forms used as a prototypes for limited benefits
28 policies (or certificates thereto in the case of group
29 policies) that are marketed to individuals through the mail
30 or mass media advertising, including both print and
31 broadcast advertising; and

32 (2) Forms used as a prototypes for limited benefits
33 policies (or certificates thereto in the case of group
34 policies), however marketed, that are sold so that the
35 individual insured makes the decision to purchase the
36 insurance and is responsible for paying all costs of the
37 insurance, including payment by salary reductions for
38 cafeteria plans under section one hundred twenty-five of
39 the Internal Revenue Code.

§33-16E-5. Premium corrections required.

1 (a) Except as otherwise provided in this section, an
2 insurer shall make a premium correction for a particular
3 limited benefits form and correction date if the
4 comparison percentage for that form and date is not at
5 least sixty-five percent (in the case of a group form) or
6 fifty-five percent (in the case of an individual form). At
7 the request of an insurer, the commissioner may apply a
8 minimum percentage that is less than the applicable
9 percentage otherwise provided in this subsection if the
10 insurer demonstrates to the satisfaction of the
11 commissioner that special circumstances justify the use of
12 that lesser percentage in order to allow the insurer a
13 reasonable profit on policies based on the form. Special
14 circumstances include, but are not limited to:

15 (1) The cost of developing the form was unusually
16 high; or

17 (2) The expenses of marketing or administering the
18 form are unusually high; or

19 (3) The form covers unusual risks or incorporates
20 unique features.

21 (b) The comparison percentage for a limited benefits
22 form that is not a level premium limited benefits form
23 shall be calculated by dividing the incurred claims for the
24 form during the three-year period ending on the
25 correction date by the earned premiums for the form
26 during the same period, and multiplying that quotient by
27 one hundred: *Provided*, That for correction dates after
28 the thirty-first day of December, two thousand two,
29 comparison percentages for level premium limited
30 benefits forms also shall be calculated in this fashion.

31 (c) The comparison percentage for a level premium
32 limited benefits form shall be calculated as follows:
33 *Provided*, That for correction dates after the thirty-first
34 day of December, two thousand two, the comparison
35 percentage for such forms instead shall be calculated as
36 described in subsection (b) of this section:

37 (1) Add the incurred claims for the form during the
38 period that begins on the ninth day of July, one thousand
39 nine hundred ninety-three, and ends on the correction
40 date, to the modified net level premium reserve for the
41 form as of the correction date: *Provided*, That any
42 premium refunds that have been paid for the form
43 pursuant to this article shall be added to the incurred
44 claims when performing this calculation;

45 (2) Divide the sum thus obtained by the earned
46 premiums for the form during the period that begins on
47 the ninth day of July, one thousand nine hundred ninety-
48 three, and ends on the correction date; and then

49 (3) Multiply the quotient thus obtained by one
50 hundred.

51 (d) If, in the opinion of the commissioner, a
52 comparison percentage that is calculated by the method
53 described in subsection (c) of this section would not
54 accurately predict the percentage of earned premiums
55 returned to policyholders and certificate holders over the
56 lifetime of a particular limited benefits form, the

57 commissioner may require that a different method be used
58 to calculate a comparison percentage for the form.

59 (e) Notwithstanding any other provision of this
60 section, an insurer may not be required to make a
61 premium correction for a particular limited benefits form
62 and correction date if the earned premiums for the form
63 during the period that begins on the ninth day of July, one
64 thousand nine hundred ninety-three, and ends on the
65 correction date is less than five hundred thousand dollars.

§33-16E-6. Amount and timing of premium corrections.

1 (a) A premium correction may be a refund of
2 premiums, a reduction in premiums, or an increase in
3 benefits. All premium corrections shall satisfy the
4 requirements of this section, and any refund or reduction
5 of premiums, or increase in benefits that does not satisfy
6 those requirements may not be regarded as a premium
7 correction for purposes of this article.

8 (b) The total amount of a premium refund for a
9 particular form shall equal the amount of additional
10 claims that, if incurred on the correction date, would cause
11 the comparison percentage for the form to equal the
12 minimum percentage for the form, with both percentages
13 being determined according to section five of this article.
14 The refund shall be allocated among those persons who
15 are policyholders as of the correction date for which the
16 refund is made. Individual refunds shall be in proportion
17 to the total amount of premiums earned for each
18 individual's policy over the entire period that the policy
19 has been in force. A premium refund that satisfies the
20 requirements of this section shall not be regarded as an
21 instance of unfair discrimination in rates or premiums for
22 purposes of subsection (7), section four, article eleven of
23 this chapter or as a rebate of premiums for purposes of
24 subsection (8) section four, article eleven of this chapter.

25 (c) A reduction of premiums or an increase in benefits
26 shall be such that the amount returned to policyholders or
27 certificate holders as incurred claims over the lifetime of
28 the form is at least equal to the minimum percentage for
29 the form determined according to section five of this

30 article: *Provided*, That for purposes of this requirement,
31 any premium refunds that have been paid for the form
32 pursuant to this article shall be regarded as incurred
33 claims. Once implemented, the reduction or increase shall
34 affect all policies, whether newly issued or renewed, that
35 are based on the form for which the correction is made.

36 (d) A reduction of premiums or increase in benefits
37 must be approved in advance by the commissioner. The
38 commissioner may approve a reduction or increase only if
39 the insurer establishes, to the satisfaction of the
40 commissioner, that the reduction or increase satisfies the
41 requirements of this section. Prior to approving or
42 disapproving a reduction or increase, the commissioner
43 may request, and the insurer shall provide, all information
44 that, in the opinion of the commissioner, is reasonably
45 related to the commissioner's decision. To evaluate a
46 reduction or increase, the commissioner may retain
47 professionals or specialists, including, but not limited to,
48 independent actuaries, to perform services that are
49 reasonably necessary to evaluate the reduction or increase.
50 The cost of those services shall be borne by the insurer
51 that has requested approval of the reduction or increase:
52 *Provided*, That the amount borne by an insurer in
53 connection with a single reduction or increase shall not
54 exceed two thousand five hundred dollars.

55 (e) Premium refunds shall be tendered to individual
56 policyholders, and reductions in premiums or increases in
57 benefits shall be implemented, on the later of the first day
58 of October of the year immediately following the
59 correction date for which the correction is made or the
60 date which is sixty days after the commissioner issues a
61 decision on a request for approval of a reduction in
62 premiums or an increase in benefits. Every individual
63 premium refund tendered later than the required tender
64 date shall include interest for the period beginning on the
65 required tender date and ending on the date on which the
66 refund is tendered, at the rate established by the tax
67 commissioner under section seventeen-a, article ten,
68 chapter eleven of this code as of the actual tender date.
69 The commissioner may withdraw approval of a premium
70 reduction or benefit increase that is not implemented by

71 the date required by this subsection unless the insurer
72 establishes to the satisfaction of the commissioner, that the
73 failure to implement the reduction or increase by that date
74 was neither willful nor a result of the insurer's negligence.
75 Insurers shall request approval of a premium reduction or
76 benefits increase no later than the first day of July of the
77 same year: *Provided*, That the commissioner may accept
78 a request for approval made after that date if, in the
79 opinion of the commissioner, the timing of the request will
80 not impair the commissioner's evaluation of the request
81 and will allow any such reduction or increase to be
82 implemented on or before the date required by this
83 subsection. If the requirements of any other state or
84 federal law restrict the implementation of any premium
85 reduction or benefit increase on the date otherwise
86 required by this subsection, such reduction or increase
87 shall be implemented on the earliest date allowed by such
88 other state or federal law.

89 (f) A premium refund that, once allocated, would
90 result in individual refunds of less than ten dollars per
91 policyholder may be retained by the insurer and placed in
92 a fund to be used to offset any future rate increases for the
93 form: *Provided*, That if the insurer subsequently pays
94 individual refunds for the same form, any amount earlier
95 placed into the fund for the same form shall be added to
96 the amount of the premium refund, and the total amount
97 allocated among individual policyholders as described in
98 subsection (b) of this section.

99 (g) Notwithstanding any other provision of this article,
100 if a particular limited benefits policy was issued for
101 delivery prior to the ninth day of July, one thousand nine
102 hundred ninety-three, an insurer shall not be required to
103 pay individual refunds to the holder of that policy.

**§33-16E-7. Report to be filed with commissioner; form;
examinations.**

1 (a) Every insurer shall annually file with the
2 commissioner a report on the limited benefits forms used
3 or available for use by the insurer during the period.

4 (1) The report shall be filed no later than the first day
5 of June: *Provided*, That the commissioner for good cause
6 shown may extend the filing date for a particular report
7 for up to ninety days.

8 (2) The report shall be prepared on a form prescribed
9 by the commissioner, and shall contain all of the
10 information required by that form. The report shall
11 provide this information for every limited benefits form
12 actually used by the insurer during the preceding calendar
13 year, and for every form that as of the final day of the
14 reporting period was approved by the commissioner.

15 (3) The report shall be executed by the insurer in the
16 manner prescribed by the commissioner.

17 (b) The commissioner may examine the records and
18 files of any insurer to determine whether the insurer has
19 complied with the provisions of this article.

§33-16E-8. Penalties.

1 (a) Any insurer that fails to comply with the provisions
2 of this article is subject to the following civil penalties:

3 (1) An insurer that has failed to file a limited benefits
4 report by the applicable filing date (determined with
5 regard to any extensions of time granted by the
6 commissioner) is subject to a penalty of two thousand five
7 hundred dollars, and an additional penalty of two
8 thousand five hundred dollars for each month or fraction
9 thereof during which the failure continues;

10 (2) An insurer that has filed a report that is incomplete
11 or inaccurate in any material respect is subject to a penalty
12 of two thousand five hundred dollars, and an additional
13 penalty of two thousand five hundred dollars for every
14 month or fraction thereof during which the insurer fails to
15 correct all material defects in the report; and

16 (3) An insurer that has failed to make a premium
17 correction during the time prescribed by this article is
18 subject to a penalty of five thousand dollars, and an
19 additional penalty of five thousand dollars for each month
20 or fraction thereof during which the failure continues.

21 (b) Penalties established by this section may not be
22 imposed if the insurer establishes, to the satisfaction of the
23 commissioner, that the failure upon which the penalty is
24 based was neither willful nor a result of the insurer's
25 negligence.

26 (c) Penalties imposed under this section shall be paid
27 to the commissioner, who shall transfer amounts so
28 received to the general revenue fund of this state. A
29 penalty shall be due when the insurer receives written
30 notice from the commissioner stating the amount of the
31 penalty and describing the failure for which it is imposed.
32 Notice of a penalty does not preclude the imposition of
33 additional penalties for subsequent months or fractions
34 thereof during which the failure identified in the notice
35 continues, or the imposition of penalties for other failures.

36 (d) The imposition of penalties under this section are
37 in addition to, and not in lieu of, any other penalties,
38 charges, sanctions, or liabilities allowed by law.

§33-16E-9. Notice of cancellation or nonrenewal.

1 No insurer may cancel or nonrenew a limited benefits
2 policy, or a certificate thereto in the case of a group
3 policy, unless written notice of such cancellation or
4 nonrenewal is forwarded to the policyholder or certificate
5 holder not less than sixty days prior to the expiration date
6 of the policy or certificate.

§33-16E-10. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies.

1 (a) If a limited benefits policy replaces another limited
2 benefits policy providing similar coverage, the insurer
3 issuing the replacement policy shall waive any time
4 periods applicable to preexisting conditions, waiting
5 periods, elimination periods and probationary periods in
6 the new limited benefits policy to the extent that such time
7 was spent under the original policy or certificate.

8 (b) If a limited benefits policy replaces another limited
9 benefits policy providing similar coverage that has been in
10 effect for at least six months, the replacement policy may

11 not provide any time periods applicable to preexisting
12 conditions, waiting periods, elimination periods and
13 probationary periods.

§33-16E-11. Applicability of other provisions.

1 Except as otherwise provided, all the provisions of
2 article fifteen of this chapter are applicable to individual
3 limited benefits policies and all provisions of article
4 sixteen of this chapter are applicable to group limited
5 benefits policies.

§33-16E-12. Commissioner to promulgate rules.

1 The commissioner may promulgate rules in
2 accordance with the provisions of chapter twenty-nine-a of
3 this code regarding the implementation, regulation and
4 enforcement of the provisions of this article.

§33-16E-13. Commissioner's authority to reject new policy or certificate forms.

1 The commissioner may disapprove any new limited
2 benefits form if the commissioner determines that the new
3 form likely will be used by the insurer in lieu of an
4 existing form so as to allow the insurer to avoid making
5 premium corrections on the existing form.

§33-16E-14. Commissioner's report to the Legislature.

1 The commissioner shall prepare a report to the
2 Legislature, to be delivered during the regular session of
3 the Legislature held in the year two thousand two. The
4 commissioner's report shall evaluate the provisions of this
5 article (including, but not limited to, the provisions that
6 establish a method for computed comparison percentages
7 for level premium limited benefits policies) and may
8 include proposed changes or alternatives to those
9 provisions.

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

Paul Schooner
Chairman Senate Committee

Nick Frantasio
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell K. Lewis
Clerk of the Senate

Suzanne M. Gray
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *approved* this the *7th*
day of *April*, 1998.

[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 11:15 am