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SB 450

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*Regular Session, 2004*

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**ENROLLED**

SENATE BILL NO. 450

(By Senator Minard )

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PASSED March 13, 2004

In Effect 90 days from **Passage**

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SECRETARY OF STATE

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**Senate Bill No. 450**

(BY SENATOR MINARD)

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[Passed March 13, 2004; in effect ninety days from passage.]

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AN ACT to amend and reenact §33-15A-4, §33-15A-5 and §33-15A-6 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §33-15A-7, §33-15A-8, §33-15A-9 and §33-15A-10, all relating to the regulation of long-term care insurance policies; defining terms; establishing extraterritorial jurisdiction; summarizing disclosure and performance standards for long-term care insurance; instituting and regulating an incontestability period; disclosing nonforfeiture benefits; providing the commissioner authority to promulgate regulations; providing penalties; and establishing an effective date.

*Be it enacted by the Legislature of West Virginia:*

That §33-15A-4, §33-15A-5 and §33-15A-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §33-15A-7, §33-15A-8, §33-15A-9 and §33-15A-10, all to read as follows:

**ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.****§33-15A-4. Definitions.**

1 (a) "Long-term care insurance" means any insurance  
2 policy or rider advertised, marketed, offered or designed  
3 to provide coverage for not less than twelve consecutive  
4 months for each covered person on an expense incurred,  
5 indemnity, prepaid or other basis; for one or more neces-  
6 sary or medically necessary diagnostic, preventive, thera-  
7 peutic, rehabilitative, maintenance or personal care  
8 services, provided in a setting other than an acute care  
9 unit of a hospital. The term includes group and individual,  
10 annuities and life insurance policies or riders that provide  
11 directly or supplement long-term care insurance. The term  
12 also includes a policy or rider that provides for payment of  
13 benefits based upon cognitive impairment or the loss of  
14 functional capacity. The term shall also include qualified  
15 long-term care insurance contracts. Long-term care  
16 insurance may be issued by insurers; fraternal benefit  
17 societies; nonprofit health, hospital, and medical service  
18 corporations; prepaid health plans; health maintenance  
19 organizations or any similar organization to the extent  
20 they are otherwise authorized to issue life or health  
21 insurance. Long-term care insuranceshall not include any  
22 insurance policy that is offered primarily to provide basic  
23 medicare supplement coverage, basic hospital expense  
24 coverage, basic medical-surgical expense coverage,  
25 hospital confinement indemnity coverage, major medical  
26 expense coverage, disability income or related as-  
27 set-protection coverage, accident only coverage, specified  
28 disease or specified accident coverage, or limited benefit  
29 health coverage. With regard to life insurance, this term  
30 does not include life insurance policies that accelerate the  
31 death benefit specifically for one or more of the qualifying  
32 events of terminal illness, medical conditions requiring  
33 extraordinary medical intervention or permanent institu-  
34 tional confinement and that provide the option of a  
35 lump-sum payment for those benefits and where neither  
36 the benefits nor the eligibility for the benefits is condi-

37 tioned upon the receipt of long-term care. Notwithstand-  
38 ing any other provision of this article, any product adver-  
39 tised, marketed or offered as long-term care insurance  
40 shall be subject to the provisions of this article .

41 (b) "Applicant" means:

42 (1) In the case of an individual long-term care insurance  
43 policy, the person who seeks to contract for benefits; and

44 (2) In the case of a group long-term care insurance  
45 policy, the proposed certificate holder.

46 (c) "Certificate" means, for the purposes of this article,  
47 any certificate issued under a group long-term care  
48 insurance policy delivered or issued for delivery in this  
49 state.

50 (d) "Commissioner" means the insurance commissioner  
51 of this state.

52 (e) "Group long-term care insurance" means a long-term  
53 care insurance policy that is delivered or issued for  
54 delivery in this state and issued to:

55 (1) One or more employers or labor organizations, or to  
56 a trust or to the trustees of a fund established by one or  
57 more employers or labor organizations, or a combination  
58 thereof, for employees or former employees or a combina-  
59 tion thereof or for members or former members or a  
60 combination thereof, of the labor organizations; or

61 (2) Any professional, trade or occupational association  
62 for its members or former or retired members, or combina-  
63 tion thereof, if the association:

64 (A) Is composed of individuals all of whom are or were  
65 actively engaged in the same profession, trade or occupa-  
66 tion; and

67 (B) Has been maintained in good faith for purposes other  
68 than obtaining insurance; or

69 (3) An association or a trust or the trustees of a fund  
70 established, created or maintained for the benefit of  
71 members of one or more associations. Prior to advertising,  
72 marketing or offering the policy within this state, the  
73 association or associations, or the insurer of the associa-  
74 tion or associations, shall file evidence with the commis-  
75 sioner that the association or associations have at the  
76 outset a minimum of one hundred persons and have been  
77 organized and maintained in good faith for the purposes  
78 other than that of obtaining insurance; have been in active  
79 existence for at least one year; and have a constitution and  
80 bylaws that provide that:

81 (A) The association or associations hold regular meetings  
82 not less than annually to further purposes of the members;

83 (B) Except for credit unions, the association or associa-  
84 tions collect dues or solicit contributions from members;  
85 and

86 (C) The members have voting privileges and representa-  
87 tion on the governing board and committees.

88 Thirty days after the filing the association or associa-  
89 tions will be deemed to satisfy the organizational require-  
90 ments, unless the commissioner makes a finding that the  
91 association or associations do not satisfy those organiza-  
92 tional requirements.

93 (4) A group other than as described in subdivisions (1),  
94 (2) and (3), subsection (e) of this section, subject to a  
95 finding by the commissioner that:

96 (A) The issuance of the group policy is not contrary to  
97 the best interest of the public;

98 (B) The issuance of the group policy would result in  
99 economies of acquisition or administration; and

100 (C) The benefits are reasonable in relation to the premi-  
101 ums charged.

102 (f) "Policy" means, for the purposes of this article, any  
103 policy, contract, subscriber agreement, rider or endorse-  
104 ment delivered or issued for delivery in this state by an  
105 insurer; fraternal benefit society; nonprofit health, hospi-  
106 tal, or medical service corporation; prepaid health plan;  
107 health maintenance organization or any similar organiza-  
108 tion.

109 (g) (1) "Qualified long-term care insurance contract" or  
110 "federally tax qualified long-term care insurance con-  
111 tract" means an individual or group insurance contract  
112 that meets the requirements of Section 7702B(b) of the  
113 Internal Revenue Code of 1986, as amended, as follows:

114 (A) The only insurance protection provided under the  
115 contract is coverage of qualified long-term care services.  
116 A contract shall not fail to satisfy the requirements of this  
117 paragraph by reason of payments being made on a per  
118 diem or other periodic basis without regard to the ex-  
119 penses incurred during the period to which the payments  
120 relate;

121 (B) The contract does not pay or reimburse expenses  
122 incurred for services or items to the extent that the  
123 expenses are reimbursable under Title XVIII of the Social  
124 Security Act, as amended, or would be so reimbursable but  
125 for the application of a deductible or coinsurance amount.  
126 The requirements of this paragraph do not apply to  
127 expenses that are reimbursable under Title XVIII of the  
128 Social Security Act only as a secondary payor. A contract  
129 shall not fail to satisfy the requirements of this paragraph  
130 by reason of payments being made on a per diem or other  
131 periodic basis without regard to the expenses incurred  
132 during the period to which the payments relate;

133 (C) The contract is guaranteed renewable, within the  
134 meaning of Section 7702B(b)(1)(C) of the Internal Revenue  
135 Code of 1986, as amended;

136 (D) The contract does not provide for a cash surrender  
137 value or other money that can be paid, assigned, pledged

138 as collateral for a loan, or borrowed except as provided in  
139 paragraph E of this subdivision.

140 (E) All refunds of premiums and all policyholder divi-  
141 dends or similar amounts under the contract are to be  
142 applied as a reduction in future premiums or to increase  
143 future benefits, except that a refund on the event of death  
144 of the insured or a complete surrender or cancellation of  
145 the contract cannot exceed the aggregate premiums paid  
146 under the contract; and

147 (F) The contract meets the consumer protection provi-  
148 sions set forth in Section 7702B(g) of the Internal Revenue  
149 Code of 1986, as amended.

150 (2) "Qualified long-term care insurance contract" or  
151 "federally tax-qualified long-term care insurance con-  
152 tract" also means the portion of a life insurance contract  
153 that provides long-term care insurance coverage by rider  
154 or as part of the contract and that satisfies the require-  
155 ments of Sections 7702B(b) and (e) of the Internal Revenue  
156 Code of 1986, as amended.

**§33-15A-5. Extraterritorial jurisdiction - Group long-term care insurance.**

1 No group long-term care insurance coverage may be  
2 offered to a resident of this state under a group policy  
3 issued in another state to a group described in subdivision  
4 (4), subsection (e), section four of this article unless this  
5 state or another state having statutory and regulatory  
6 long-term care insurance requirements substantially  
7 similar to those adopted in this state has made a determi-  
8 nation that such requirements have been met.

**§33-15A-6. Disclosure and performance standards for long-term care insurance.**

1 (a) The commissioner may adopt rules that include  
2 standards for full and fair disclosure setting forth the  
3 manner, content and required disclosures for the sale of

4 long-term care insurance policies, terms of renewability,  
5 initial and subsequent conditions of eligibility,  
6 nonduplication of coverage provisions, coverage of de-  
7 pendants, preexisting conditions, termination of insurance,  
8 continuation or conversion, probationary periods, limita-  
9 tions, exceptions, reductions, elimination periods, require-  
10 ments for replacement, recurrent conditions and defini-  
11 tions of terms.

12 (b) No long-term care insurance policy may:

13 (1) Be canceled, nonrenewed or otherwise terminated on  
14 the grounds of the age or the deterioration of the mental or  
15 physical health of the insured individual or certificate  
16 holder;

17 (2) Contain a provision establishing a new waiting period  
18 in the event existing coverage is converted to or replaced  
19 by a new or other form within the same company, except  
20 with respect to an increase in benefits voluntarily selected  
21 by the insured individual or group policyholder; or

22 (3) Provide coverage for skilled nursing care only or  
23 provide significantly more coverage for skilled care in a  
24 facility than coverage for lower levels of care.

25 (c) Preexisting condition:

26 (1) No long-term care insurance policy or certificate  
27 other than a policy or certificate thereunder issued to a  
28 group as defined in subdivision (1), subsection (e), section  
29 four of this article shall use a definition of "preexisting  
30 condition" that is more restrictive than the following:  
31 Preexisting condition means a condition for which medical  
32 advice or treatment was recommended by, or received  
33 from, a provider of health care services within six months  
34 preceding the effective date of coverage of an insured  
35 person.

36 (2) No long-term care insurance policy or certificate  
37 other than a policy or certificate thereunder issued to a



38 group as defined in subdivision (1), subsection (e), section  
39 four of this article may exclude coverage for a loss or  
40 confinement that is the result of a preexisting condition  
41 unless loss or confinement begins within six months  
42 following the effective date of coverage of an insured  
43 person.

44 (3) The commissioner may extend the limitation periods  
45 set forth in subdivision (1) and (2), subsection (c) of this  
46 section as to specific age group categories in specific policy  
47 forms upon findings that the extension is in the best  
48 interest of the public.

49 (4) The definition of "preexisting condition" does not  
50 prohibit an insurer from using an application form de-  
51 signed to elicit the complete health history of an applicant,  
52 and, on the basis of the answers on that application, from  
53 underwriting in accordance with that insurer's established  
54 underwriting standards. Unless otherwise provided in the  
55 policy or certificate, a preexisting condition, regardless of  
56 whether it is disclosed on the application, need not be  
57 covered until the waiting period described in subdivision  
58 (2), subsection (c) of this section expires. No long-term  
59 care insurance policy or certificate may exclude or use  
60 waivers or riders of any kind to exclude, limit or reduce  
61 coverage or benefits for specifically named or described  
62 preexisting diseases or physical conditions beyond the  
63 waiting period described in subdivision (2), subsection (c)  
64 of this section.

65 (d) Prior hospitalization/institutionalization:

66 (1) No long-term care insurance policy may be delivered  
67 or issued for delivery in this state if the policy:

68 (A) Conditions eligibility for any benefits on a prior  
69 hospitalization requirement;

70 (B) Conditions eligibility for benefits provided in an  
71 institutional care setting on the receipt of a higher level of  
72 institutional care ; or

73 (C) Conditions eligibility for any benefits other than  
74 waiver of premium, post-confinement, post-acute care or  
75 recuperative benefits on a prior institutionalization  
76 requirement.

77 (2) (A) A long-term care insurance policy containing  
78 post-confinement, post-acute care or recuperative benefits  
79 shall clearly label in a separate paragraph of the policy or  
80 certificate entitled "Limitations or Conditions on Eligibil-  
81 ity for Benefits" such limitations or conditions, including  
82 any required number of days of confinement.

83 (B) A long-term care insurance policy or rider that  
84 conditions eligibility of noninstitutional benefits on the  
85 prior receipt of institutional care shall not require a prior  
86 institutional stay of more than thirty days.

87 (3) No long-term care insurance policy or rider that  
88 provides benefits only following institutionalization shall  
89 condition such benefits upon admission to a facility for the  
90 same or related conditions within a period of less than  
91 thirty days after discharge from the institution.

92 (e) The commissioner may adopt rules establishing loss  
93 ratio standards for long-term care insurance policies  
94 provided that a specific reference to long-term care  
95 insurance policies is contained in the rule.(f) Right to  
96 return - free look:

97 (1) Long-term care insurance applicants shall have the  
98 right to return the policy or certificate within thirty days  
99 of its delivery and to have the premium refunded if, after  
100 examination of the policy or certificate, the applicant is  
101 not satisfied for any reason. Long-term care insurance  
102 policies and certificates shall have a notice prominently  
103 printed on the first page or attached thereto stating in  
104 substance that the applicant shall have the right to return  
105 the policy or certificate within thirty days of its delivery  
106 and to have the premium refunded if , after examination  
107 of the policy or certificate, other than a certificate issued  
108 pursuant to a policy issued to a group defined in subdivi-

109 sion (1), subsection (e), section four of this article, the  
110 applicant is not satisfied for any reason.

111 (2) This subsection shall also apply to denials of applica-  
112 tions and any refund must be made within thirty days of  
113 the return or denial.

114 (g) Outline of coverage:

115 (1) An outline of coverage shall be delivered to a pro-  
116 spective applicant for long-term care insurance at the time  
117 of initial solicitation through means that prominently  
118 direct the attention of the recipient to the document and  
119 its purpose.

120 (A) The commissioner shall prescribe a standard format,  
121 including style, arrangement and overall appearance, and  
122 the content of an outline of coverage.

123 (B) In the case of agent solicitations, an agent must  
124 deliver the outline of coverage prior to the presentation of  
125 an application or enrollment form.

126 (C) In the case of direct response solicitations, the outline  
127 of coverage must be presented in conjunction with any  
128 application or enrollment form.

129 (D) In the case of a policy issued to a group defined in  
130 subdivision (1), subsection (e), section four of this article,  
131 an outline of coverage shall not be required to be deliv-  
132 ered, provided that the information described in para-  
133 graphs (A) through (F), inclusive, subdivision (2) of this  
134 subsection is contained in other materials relating to  
135 enrollment. Upon request, these other materials shall be  
136 made available to the commissioner.

137 (2) The outline of coverage shall include:

138 (A) A description of the principal benefits and coverage  
139 provided in the policy;

140 (B) A statement of the principal exclusions, reductions,  
141 and limitations contained in the policy;

142 (C) A statement of the terms under which the policy or  
143 certificate, or both, may be continued in force or discon-  
144 tinued, including any reservation in the policy of a right to  
145 change premium. Continuation or conversion provisions  
146 of group coverage shall be specifically described;

147 (D) A statement that the outline of coverage is a sum-  
148 mary only, not a contract of insurance, and that the policy  
149 or group master policy contain governing contractual  
150 provisions;

151 (E) A description of the terms under which the policy or  
152 certificate may be returned and premium refunded;

153 (F) A brief description of the relationship of cost of care  
154 and benefits; and

155 (G) A statement that discloses to the policyholder or  
156 certificate holder whether the policy is intended to be a  
157 federally tax-qualified long-term care insurance contract  
158 under Section 7702(B)(b) of the Internal Revenue Code of  
159 1986, as amended.

160 (h) A certificate issued pursuant to a group long-term  
161 care insurance policy that is delivered or issued for  
162 delivery in this state shall include:

163 (1) A description of the principal benefits and coverage  
164 provided in the policy;

165 (2) A statement of the principal exclusions, reductions  
166 and limitations contained in the policy; and

167 (3) A statement that the group master policy determines  
168 governing contractual provisions.

169 (i) If an applicant for a long-term care insurance con-  
170 tract or certificate is approved, the issuer shall deliver the  
171 contract or certificate of insurance to the applicant no  
172 later than thirty days after the date of approval.

173 (j) At the time of policy delivery, a policy summary shall  
174 be delivered for an individual life insurance policy that

175 provides long-term care benefits within the policy or by  
176 rider. In the case of direct response solicitations, the  
177 insurer shall deliver the policy summary upon the appli-  
178 cant's request, but regardless of request shall make  
179 delivery no later than at the time of policy delivery. In  
180 addition to complying with all applicable requirements,  
181 the summary shall also include:

182 (1) An explanation of how the long-term care benefit  
183 interacts with other components of the policy, including  
184 deductions from death benefits;

185 (2) An illustration of the amount of benefits, the length  
186 of benefit, and the guaranteed lifetime benefits if any, for  
187 each covered person;

188 (3) Any exclusions, reductions and limitations on bene-  
189 fits of long-term care;

190 (4) A statement that any long-term care inflation protec-  
191 tion option required by section eight of the commissioner's  
192 rule relating to long-term care insurance is not available  
193 under this policy; and

194 (5) If applicable to the policy type, the summary shall  
195 also include:

196 (A) A disclosure of the effects of exercising other rights  
197 under the policy;

198 (B) A disclosure of guarantees related to long-term care  
199 costs of insurance charges; and

200 (C) Current and projected maximum lifetime benefits.

201 (k) Any time a long-term care benefit, funded through a  
202 life insurance vehicle by the acceleration of the death  
203 benefit, is in benefit payment status, a monthly report  
204 shall be provided to the policyholder. The report shall  
205 include:

206 (1) Any long-term care benefits paid out during the  
207 month;

208 (2) An explanation of any changes in the policy, for example death benefits or cash values, due to long-term care benefits being paid out; and

211 (3) The amount of long-term care benefits existing or remaining.

213 (1) If a claim under a long-term care insurance contract is denied, the issuer shall, within sixty days of the date of a written request by the policyholder or certificate holder, or a representative thereof:

217 (1) Provide a written explanation of the reasons for the denial; and

219 (2) Make available all information directly related to the denial.

221 (m) Any policy or rider advertised, marketed or offered as long-term care or nursing home insurance shall comply with the provisions of this article.

§33-15A-7. Incontestability period.

1 (a) For a policy or certificate that has been in force for less than six months an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance for coverage.

7 (b) For a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought.

14 (c) After a policy or certificate has been in force for two years it is not contestable upon the grounds of misrepresentation alone. The policy or certificate may be contested

17 only upon a showing that the insured knowingly and  
18 intentionally misrepresented relevant facts relating to the  
19 insured's health.

20 (d) No long-term care insurance policy or certificate may  
21 be field issued based on medical or health status. For  
22 purposes of this subsection, "field issued" means a policy  
23 or certificate issued by an agent or a third-party adminis-  
24 trator pursuant to the underwriting authority granted to  
25 the agent or third-party administrator by an insurer.

26 (e) If an insurer has paid benefits under the long-term  
27 care insurance policy or certificate, the benefit payments  
28 may not be recovered by the insurer in the event that the  
29 policy or certificate is rescinded.

30 (f) In the event of the death of the insured, this section  
31 shall not apply to the remaining death benefit of a life  
32 insurance policy that accelerates benefits for long-term  
33 care. In this situation, the remaining death benefits under  
34 these policies shall be governed by section four, article  
35 thirteen of this chapter. In all other situations, this section  
36 shall apply to life insurance policies that accelerate  
37 benefits for long-term care.

**§33-15A-8. Nonforfeiture benefits.**

1 (a) Except as provided in subsection (b) of this section,  
2 a long-term care insurance policy may not be delivered or  
3 issued for delivery in this state unless the policyholder or  
4 certificate holder has been offered the option of purchas-  
5 ing a policy or certificate including a nonforfeiture benefit.  
6 The offer of a nonforfeiture benefit may be in the form of  
7 a rider that is attached to the policy. In the event the  
8 policyholder or certificate holder declines the  
9 nonforfeiture benefit, the insurer shall provide a contin-  
10 gent benefit upon lapse that shall be available for a  
11 specified period of time following a substantial increase in  
12 premium rates.

13 (b) When a group long-term care insurance policy is  
14 issued, the offer required in subsection (a) of this section

15 shall be made to the group policyholder. However, if the  
16 policy is issued as group long-term care insurance as  
17 defined in subdivision (4), subsection (e), section four of  
18 this article, other than to a continuing care retirement  
19 community or other similar entity, the offering shall be  
20 made to each proposed certificate holder.

21 (c) The commissioner may promulgate rules pursuant to  
22 chapter twenty-nine-a of this code specifying the type or  
23 types of nonforfeiture benefits to be offered as part of  
24 long-term care insurance policies and certificates, the  
25 standards for nonforfeiture benefits and the rules regard-  
26 ing contingent benefit upon lapse, including a determina-  
27 tion of the specified period of time during which a contin-  
28 gent benefit upon lapse will be available and the substan-  
29 tial premium rate increase that triggers a contingent  
30 benefit upon lapse as described in subsection (a) of this  
31 section.

**§33-15A-9. Authority to promulgate rules.**

1 The commissioner may issue reasonable rules pursuant  
2 to article twenty-nine-a of this code to promote premium  
3 adequacy and to protect the policyholder in the event of  
4 substantial rate increases and to establish minimum  
5 standards for marketing practices, agent compensation,  
6 agent testing, penalties and reporting practices for  
7 long-term care insurance.

**§33-15A-10. Penalties.**

1 In addition to any other penalties provided by the laws  
2 of this state, any insurer and any agent found to have  
3 violated any requirement of this state relating to the  
4 regulation of long-term care insurance or the marketing of  
5 such insurance shall be subject to a fine of up to three  
6 times the amount of any commissions paid for each policy  
7 involved in the violation or up to ten thousand dollars,  
8 whichever is greater.



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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *2nd*  
Day of *April* ....., 2004.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

DATE 3/26/04

TIME 3:25 P