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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993



ENROLLED
Com. Sub. for
SENATE BILL NO. 510

(By Senator Minard, et al)



PASSED April 9, 1993
In Effect 90 days from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 510

(SENATORS MINARD, JONES, HELMICK, BLATNIK, DITTMAR,
MANCHIN, SHARPE, FELTON, WIEDEBUSCH, BAILEY, WOOTON
AND GRUBB, *original sponsors*)

[Passed April 9, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two and four, article six-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fifteen of said chapter by adding thereto a new section, designated section one-a; to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten and twelve, article sixteen-d of said chapter; and to further amend said chapter by adding thereto a new article, designated article sixteen-e, all relating to accident and sickness insurance; excepting individual limited benefits accident and sickness insurance policies and certificates from optional guaranteed loss ratio provisions of article six-c, chapter thirty-three of said code; increasing the optional minimum guaranteed loss-ratio for individual accident and sickness insurance policies and certificates; establishing requirements for rate increase requests after the first day of July, one thousand nine hundred ninety-

four, for insurers issuing individual accident and sickness insurance policies; revising certain definitions and eliminating others relating to marketing and rate practices for small employer accident and sickness insurance policies; substituting the term "carrier" for "insurer"; applying the provisions of article sixteen-d of said chapter to any health benefit plan described therein that covers one or more employees of a small employer situate in West Virginia; specifying additional premium rating restrictions; eliminating provisions on the insurance commissioner conducting a public hearing before increasing the anticipated loss ratio for a small employer carrier; eliminating enumerated rule-making mandates; granting permissive rule-making authority to the insurance commissioner; requiring disclosure of preexisting conditions limitations in such health benefit plans; requiring certification of compliance with statutory premium rating provisions; creating a new article sixteen-e of said chapter on limited benefits accident and sickness insurance policies and certificates; defining the scope of and terms used in said article; establishing loss ratio standards for premium rate increase requests made after the first day of July, one thousand nine hundred ninety-three for such policies and certificates; establishing loss ratios requiring premium refunds to be made after the first day of July, one thousand nine hundred ninety-four; requiring annual filing of verified statements of actual loss ratio; requiring sixty days' notice of cancellation or non-renewal of such policies or certificates; prohibiting preexisting conditions limitations, waiting periods and the like upon replacement of such policies and certificates; providing for extraterritorial jurisdiction of the insurance commissioner over certain policies; specifying severability of provisions of said article; providing for the promulgation of rules; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That sections one, two and four, article six-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenact-

ed; that article fifteen of said chapter be amended by adding thereto a new section, designated section one-a; that sections two, three, four, five, six, seven, eight, nine, ten and twelve, article sixteen-d of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article sixteen-e, all to read as follows:

ARTICLE 6C. GUARANTEED LOSS RATIOS AS APPLIED TO INDIVIDUAL SICKNESS AND ACCIDENT INSURANCE POLICIES.

§33-6C-1. Loss ratio guarantees; definitions.

1 As used in this article:

2 (a) "Commissioner" means the insurance commis-
3 sioner of West Virginia;

4 (b) "Experience period" means, for any given rate
5 filing for which a loss ratio guarantee is made, the
6 period beginning on the first day of the calendar year
7 during which the guaranteed rates first take effect and
8 ending on the last day of the calendar year during
9 which the insurer earns one million dollars in premi-
10 ums on the form in West Virginia or, if the annual
11 premium earned on the form in West Virginia is less
12 than one million dollars, earns nationally;

13 (c) "Form" means individual sickness and accident
14 policy forms of any insurer offering such benefits,
15 other than a form for a limited benefits policy or
16 certificate as defined in section two, article sixteen-e of
17 this chapter;

18 (d) "Loss ratio" means the ratio of incurred claims
19 to earned premium; and

20 (e) "Successive experience period" means the expe-
21 rience period beginning on the first day following the
22 end of the preceding experience period.

§33-6C-2. Insurance commissioner to establish guaranteed loss ratios; minimum rates; participation by insurer; calculation of ratios; minimum rate; application.

1 (a) The insurance commissioner shall establish a
2 guaranteed loss ratio which may be implemented by
3 any insurer offering individual sickness and accident
4 insurance policies other than limited benefits accident
5 and sickness insurance policies or certificates, which
6 are subject to loss ratio requirements set forth in
7 sections three and four, article sixteen-e of this
8 chapter. The loss ratios shall be calculated by the
9 commissioner and each individual insurer and shall be
10 based upon studies and relevant information collected
11 from various sources, including, but not limited to, the
12 health care cost review authority and the national
13 association of insurance commissioners' rate filing
14 guidelines: *Provided*, That the guaranteed loss ratio
15 shall not be less than sixty percent. The guaranteed
16 loss ratio for each insurer shall be published by the
17 insurance commissioner in the register maintained by
18 the secretary of state.

19 (b) The guaranteed loss ratio shall be based upon
20 experience periods during which the insurer earns one
21 million dollars in premium in West Virginia: *Provided*,
22 That if the annual earned premium volume in West
23 Virginia is less than one million dollars, the loss ratio
24 guarantee shall be based on such other actuarially
25 sound methods as the commissioner may determine
26 are appropriate, including, but not limited to, the
27 actual nationwide loss ratios: *Provided, however*, That
28 if the aggregate earned premium for all states is less
29 than one million dollars, the experience period will be
30 extended until the end of the calendar year in which
31 one million dollars of earned premium is attained.

32 (c) Any insurer may apply to the commissioner to
33 operate on a guaranteed loss ratio basis. The insurance
34 commissioner may review each application and, in his
35 or her discretion, approve or reject the same. Any
36 insurer approved by the commissioner shall be exempt
37 from filing rate increase applications as required by
38 the commissioner and other provisions of this chapter.

§33-6C-4. Form of guarantee; requirements.

1 (a) Individual sickness and accident policy benefits

2 under a policy form other than a limited benefits
3 policy form or certificate shall be deemed reasonable
4 in relation to the premium charged, as required by
5 subdivision (e), section nine, article six of this chapter,
6 if the premium rates are filed pursuant to a loss ratio
7 guarantee which meets the requirements of this
8 article. The insurance commissioner shall not with-
9 draw approval of a form on the grounds that benefits
10 are unreasonable in relation to premiums charged so
11 long as the insurer complies with the terms of the loss
12 ratio guarantee.

13 (b) Each insurer of individual sickness and accident
14 policy benefits other than benefits under limited
15 benefits policy forms or certificates shall execute and
16 deliver to the insurance commissioner a loss ratio
17 guarantee, to be provided by the commissioner, which
18 guarantee shall be signed by an officer of the insurer.

19 (c) Each loss ratio guarantee shall contain, at a
20 minimum, the following:

21 (1) A recitation of the anticipated lifetime and
22 durational target loss ratios contained in the original
23 actuarial memorandum filed with the policy form
24 when it was originally approved;

25 (2) A guarantee that the actual West Virginia loss
26 ratios for the experience period in which the new
27 rates take effect, and for each experience period
28 thereafter until new rates are filed, will meet or
29 exceed the anticipated lifetime and durational target
30 loss ratios contained in the original actuarial memo-
31 randum noted above;

32 (3) A guarantee that the actual West Virginia or, if
33 applicable, national, loss ratio results for the experi-
34 ence period at issue will be independently audited at
35 the insurer's expense; that such audit will be complet-
36 ed in the second quarter of the year following the end
37 of the experience period; and that the results of such
38 audit will be reported to the insurance commissioner
39 not later than the thirtieth day of June following the
40 end of the experience period;

41 (4) A guarantee that if the actual loss ratio during an
42 experience period is less than the anticipated loss ratio
43 for that period, then West Virginia policyholders will
44 receive a proportional refund based on premium
45 earned, which refunds shall be calculated and paid
46 pursuant to section thirty-nine of this article; and

47 (5) A guarantee that the insurer does not engage in
48 any discriminatory practices prohibited by section
49 four, article eleven of this chapter or any such practice
50 which discriminates against any individual on the
51 basis of his or her legal occupation, race, religion or
52 residence.

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
2 request after the first day of July, one thousand nine
3 hundred ninety-four, any insurer issuing accident and
4 sickness insurance policies which are subject to the
5 provisions of this article shall have a minimum
6 anticipated loss ratio of sixty-five percent. In calculat-
7 ing its minimum anticipated loss ratio, an insurer shall
8 include in its actual incurred claims the amount of
9 premium taxes for the same experience period which
10 are attributable to the policy forms affected by this
11 section and which were paid to the state of West
12 Virginia pursuant to the provisions of article three of
13 this chapter.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16D-2. Definitions.

1 As used in this article:

2 (a) "Actuarial certification" means a written state-
3 ment by an actuary, or other individual acceptable to
4 the commissioner, that a small employer carrier is in
5 compliance with the provisions of section five of this
6 article, based upon that person's examination, includ-

7 ing a review of the appropriate records and of the
8 actuarial assumptions and methods utilized by the
9 carrier in establishing premium rates for applicable
10 health benefit plans.

11 (b) "Base premium rate" means, for each class of
12 business as to a rating period, the lowest premium rate
13 charged or which could have been charged under a
14 rating system for that class of business, by the small
15 employer carrier to small employers with similar case
16 characteristics for health benefit plans with the same
17 or similar coverage.

18 (c) "Carrier" means any person who provides
19 accident and sickness insurance in this state. For
20 purposes of this article, carrier includes a licensed
21 insurance company; a hospital service corporation,
22 medical service corporation or health service corpora-
23 tion organized pursuant to article twenty-four of this
24 chapter; a health care corporation organized pursuant
25 to article twenty-five of this chapter; a health mainte-
26 nance organization organized pursuant to article
27 twenty-five-a of this chapter; a multiple-employer
28 trust or multiple-employer welfare arrangement; or
29 any other person providing a plan of accident and
30 sickness insurance subject to state insurance
31 regulations.

32 (d) "Case characteristics" mean demographic or
33 other relevant characteristics of a small employer, as
34 determined by a small employer carrier, which are
35 considered by the carrier in the determination of
36 premium rates for the small employer. Claim experi-
37 ence, health status and duration of coverage since
38 issue are not case characteristics for the purposes of
39 this article.

40 (e) "Class of business" means all or any distinct
41 grouping of small employers as shown on the records
42 of the small employer carrier, which shall be subject
43 to the following requirements:

44 (1) A distinct grouping may only be established by
45 the small employer carrier on the basis that the
46 applicable health benefit plans:

47 (A) Are marketed and sold through individuals and
48 organizations which are not participating in the
49 marketing or sale of other distinct groupings of small
50 employers for such small employer carrier;

51 (B) Have been acquired from another small employ-
52 er carrier as a distinct grouping of plans;

53 (C) Are provided through an association with mem-
54 bership of not less than two small employers which
55 has been formed for purposes other than obtaining
56 insurance; or

57 (D) Are in a class of business that meets the require-
58 ments for exception to the restrictions related to
59 premium rates provided in paragraph (A), subdivision
60 (1), subsection (a), section five of this article.

61 (2) A small employer carrier may establish no more
62 than two additional groupings under subdivision (1) of
63 this subsection on the basis of underwriting criteria
64 which are expected to produce substantial variation in
65 the health care costs.

66 (3) The commissioner may approve the establish-
67 ment of additional distinct groupings upon application
68 to the commissioner and a finding by the commission-
69 er that such action would enhance the efficiency and
70 fairness of the small employer insurance marketplace.

71 (f) "Commissioner" means the insurance commis-
72 sioner of West Virginia.

73 (g) "Department" means the department of
74 insurance.

75 (h) "Health benefit plan" means any hospital or
76 medical expense incurred policy; health, hospital or
77 medical service corporation contract; plan provided by
78 a multiple-employer trust or a multiple-employer
79 welfare arrangement; health maintenance organiza-
80 tion contract offered by an employer; or any other
81 policy or plan issued by a carrier which provides
82 health related benefits to small employers: *Provided,*
83 That for purposes of this article, a health benefit plan
84 shall not include accident only, credit, dental or

85 disability income insurance; coverage issued as a
86 supplement to liability insurance; insurance arising
87 out of a workers' compensation or similar law; auto-
88 mobile medical-payment insurance, or insurance
89 under which benefits are payable with or without
90 regard to fault and which is statutorily required to be
91 contained in any liability insurance policy or equiva-
92 lent self-insurance.

93 (i) "Index rate" means for each class of business for
94 small employers with similar case characteristics the
95 arithmetic average of the applicable base premium
96 rate and the corresponding highest premium rate.

97 (j) "New business premium rate" means, for each
98 class of business as to a rating period, the premium
99 rate charged or offered by the small employer carrier
100 to small employers with similar case characteristics for
101 newly issued health benefit plans with the same or
102 similar coverage.

103 (k) "Rating period" means the calendar period of at
104 least twelve months for which premium rates estab-
105 lished by a small employer carrier are assumed to be
106 in effect, as determined by the small employer carrier.

107 (l) "Small employer" means any person, firm,
108 corporation, partnership or association actively
109 engaged in business in the state of West Virginia for at
110 least one year who, on at least fifty percent of its
111 working days during the preceding year, employed no
112 more than sixty or not fewer than two eligible
113 employees: *Provided*, That companies which are
114 affiliated companies or which are eligible to file a
115 combined tax return for state tax purposes shall be
116 considered one employer.

117 (m) "Small employer carrier" means any carrier
118 which offers health benefit plans covering the
119 employees of a small employer situate within the state
120 of West Virginia.

§33-16D-3. Health insurance plans subject to this article.

1 The provisions of this article apply to any health
2 benefit plan which provides coverage to one or more

3 eligible employees of a small employer situate in the
4 state of West Virginia: *Provided*, That the provisions of
5 this article shall not apply to individual health insur-
6 ance policies which are subject to policy form and
7 premium rate approval as required by article sixteen-
8 b of this chapter.

**§33-16D-4. Discrimination in marketing prohibited; annual
filing with commissioner; violations and
penalties.**

1 (a) All carriers subject to this article are strictly
2 prohibited from marketing their product to a specific
3 group, legal occupation, locale, zip code, neighborhood,
4 race, religion, or any discriminatory group.

5 (b) All carriers subject to this article shall file any
6 marketing information upon request of the commis-
7 sioner. The commissioner shall review said informa-
8 tion and shall have the authority to take appropriate
9 action to eliminate discriminatory marketing practices,
10 including imposing fines on violators of this section of
11 not more than ten thousand dollars. Upon a second
12 violation of this section, the commissioner shall have
13 the authority to revoke the violator's license to
14 transact insurance.

**§33-16D-5. Premium rates for small employers; classes;
maximum rates; eligibility for rate increases.**

1 (a) Premium rates for health benefit plans subject to
2 this article shall be subject to the following provisions:

3 (1) The index rate for a rating period for any class
4 of business shall not exceed the index rate for any
5 other class of business by more than twenty percent:
6 *Provided*, That this subdivision shall not apply to a
7 class of business if all of the following apply:

8 (A) The class of business is one for which the carrier
9 does not reject, and never has rejected, small employ-
10 ers included within the definition of employers eligible
11 for the class of business or otherwise eligible
12 employees and dependents who enroll on a timely
13 basis, based upon their claim experience or health
14 status;

15 (B) The carrier does not involuntarily transfer, and
16 never has involuntarily transferred, a health benefits
17 plan into or out of the class of business; and

18 (C) The class of business is currently available for
19 purchase.

20 (2) For a class of business, the premium rates
21 charged during a rating period to small employers
22 with similar case characteristics for the same or
23 similar coverage, or the rates which could be charged
24 to such employers under the rating system for that
25 class of business, shall not vary from the index rate by
26 more than twenty-five percent of the index rate.

27 (3) The percentage increase in the premium rate
28 charged to a small employer for a new rating period
29 may not exceed the sum of the following:

30 (A) The percentage change in the new business
31 premium rate measured from the first day of the prior
32 rating period to the first day of the new rating period.
33 In the case of a class of business for which the small
34 employer carrier is not issuing new policies, the
35 carrier shall use the percentage change in the base
36 premium rate;

37 (B) An adjustment, not to exceed fifteen percent
38 annually and adjusted pro rata for rating periods of
39 less than one year, due to the claim experience, health
40 status or duration of coverage of the employees or
41 dependents of the small employer as determined from
42 the carrier's rate manual for the class of business; and

43 (C) Any adjustment due to change in coverage or
44 change in the case characteristics of the small employ-
45 er as determined from the carrier's rate manual for
46 the class of business.

47 (4) In the case of health benefit plans issued prior to
48 the effective date of this article, a premium rate for a
49 rating period may exceed the ranges described in
50 subdivision (1) or (2) of this subsection for a period of
51 five years following the effective date of this article. In
52 that case, the percentage increase in the premium rate
53 charged to a small employer in such a class of business

54 for a new rating period may not exceed the sum of the
55 following:

56 (A) The percentage change in the new business
57 premium rate measured from the first day of the prior
58 rating period to the first day of the new rating period.
59 In the case of a class of business for which the small
60 employer carrier is not issuing new policies, the
61 carrier shall use the percentage change in the base
62 premium rate; and

63 (B) Any adjustment due to change in coverage or
64 change in the case characteristics of the small employ-
65 er as determined from the carrier's rate manual for
66 the class of business.

67 (b) Nothing in this section is intended to affect the
68 use by a small employer carrier of legitimate rating
69 factors other than claim experience, health status or
70 duration of coverage in the determination of premium
71 rates. Small employer carriers shall apply rating
72 factors, including case characteristics, consistently
73 with respect to all small employers in a class of
74 business.

75 (c) Adjustments in rates for claim experience, health
76 status and duration of coverage may not be charged to
77 individual employees or dependents. Any such adjust-
78 ment shall be applied uniformly to the rates charged
79 for all employees and dependents of the small
80 employer.

81 (d) A small employer carrier shall utilize industry as
82 a case characteristic in establishing premium rates:
83 *Provided*, That the highest rate factor associated with
84 any industry classification shall not exceed the lowest
85 rate factor associated with any industry classification
86 by more than fifteen percent.

87 (e) Small employer carriers shall apply rating
88 factors, including case characteristics, consistently
89 with respect to all small employers in a class of
90 business. Rating factors shall produce premiums for
91 identical groups which differ only by amounts attrib-
92 utable to plan design and do not reflect differences due

93 to the nature of the groups assumed to select particu-
94 lar health benefit plans.

95 (f) A small employer carrier may not involuntarily
96 transfer a small employer into or out of a class of
97 business. A small employer carrier may not offer to
98 transfer a small employer into or out of a class of
99 business unless such offer is made to transfer all small
100 employers in the class of business without regard to
101 case characteristics, claim experience, health status or
102 duration since issue.

103 (g) To be eligible to make a rate increase request
104 after the first day of July, one thousand nine hundred
105 ninety-three, a carrier shall have a minimum antici-
106 pated loss ratio of seventy-three percent. In calculating
107 its minimum anticipated loss ratio, an insurer shall
108 include in its actual incurred claims the amount of
109 premium taxes for the same experience period which
110 are attributable to the policy forms or certificates
111 affected by this section and which were paid to the
112 state of West Virginia pursuant to the provisions of
113 article three of this chapter.

114 (h) All insurers carriers subject to this article,
115 effective the first day of July, one thousand nine
116 hundred ninety-three, shall be prohibited from distin-
117 guishing more than four classes of business within its
118 small group insurance coverage.

119 (i) If any health benefit plan is provided by a carrier
120 through an association of small employers not in the
121 business of selling insurance and with not fewer than
122 two hundred cumulative employees, and if such
123 association is rated on the basis of the number of
124 employees and not on the basis of the individual small
125 employers, such association or group is exempt from
126 the provisions of this article.

§33-16D-6. Insurance commissioner to promulgate rules.

1 Pursuant to chapter twenty-nine-a of this code, the
2 insurance commissioner may promulgate rules neces-
3 sary to implement the provisions of this article.

§33-16D-7. Renewability of coverage; exceptions.

1 (a) A health benefit plan subject to this article shall
2 be renewable to all eligible employees at the option of
3 the small employer: *Provided*, That a carrier may
4 refuse to renew a health benefit plan for any of the
5 following reasons:

6 (1) Nonpayment of required premiums;

7 (2) Fraud or misrepresentation by the small employ-
8 er or by the insured individual;

9 (3) Noncompliance with plan provisions;

10 (4) The number of individuals covered under the
11 plan is fewer than the number or less than the
12 percentage of eligible individuals necessary pursuant
13 to the percentage requirements under the plan; or

14 (5) The small employer is no longer actively engaged
15 in the business in which it was engaged on the
16 effective date of the plan.

17 (b) A small employer carrier may cease to renew all
18 plans under a class of business. Upon the small
19 employer's election of nonrenewal, the carrier shall
20 provide notice of such election not to renew to all
21 affected health benefit plans and to the commissioner
22 in each state in which an affected insured individual
23 is known to reside at least ninety days prior to
24 termination of coverage.

25 (c) A carrier which exercises its right to cease to
26 renew all plans in a class of business may not:

27 (1) Establish a new class of business for a period of
28 five years after the nonrenewal of the plans without
29 prior approval of the commissioner; or

30 (2) Transfer or otherwise provide coverage to any of
31 the employers from the nonrenewed class of business
32 unless the carrier offers to transfer or provide cover-
33 age to all affected employers and eligible employees
34 without regard to case characteristics, claim experi-
35 ence, health status or duration of coverage.

§33-16D-8. Disclosure of rating practices and renewability provisions.

1 (a) Each small employer carrier shall make reason-
2 able disclosure in solicitation and sales materials
3 provided to small employers of the following:

4 (1) The extent to which premium rates for a specific
5 small employer are established or adjusted due to the
6 claim experience, health status or duration of coverage
7 of the employees of the small employer;

8 (2) The provisions concerning the carrier's right to
9 change premium rates and the factors, including case
10 characteristics, which affect changes in premium
11 rates;

12 (3) A description of the class of business in which the
13 small employer is or will be included, including the
14 applicable grouping of plans;

15 (4) The provisions relating to renewability of
16 coverage;

17 (5) The provisions relating to any preexisting condi-
18 tions limitations; and

19 (6) An explanation, if applicable, that the small
20 employer is purchasing a minimum benefits plan
21 issued pursuant to article sixteen-c of this chapter.

22 (b) All disclosure statements shall be presented in
23 clear and understandable form and format and shall
24 be separate from any policy, certificate or evidence of
25 coverage otherwise provided.

§33-16D-9. Maintenance of records.

1 (a) Each small employer carrier shall maintain at its
2 principal place of business a complete and detailed
3 description of its rating practices and renewal under-
4 writing practices, including information and documen-
5 tation which demonstrate that its rating methods and
6 practices are based upon commonly accepted actuarial
7 principles.

8 (b) Each small employer carrier shall file each first
9 day of March with the commissioner an actuarial
10 certification that the carrier is in compliance with the
11 provisions of section five of this article and that the

12 rating methods of the carrier are actuarially sound. A
13 copy of such certification shall be retained by the
14 carrier at its principal place of business.

15 (c) A small employer carrier shall make the infor-
16 mation and documentation described in subsection (a)
17 of this section available to the commissioner upon
18 request.

§33-16D-10. Suspension of requirements.

1 The insurance commissioner may suspend all or part
2 of the requirements of this article applicable to one or
3 more health benefit plans for one or more rating
4 periods upon a filing by the small employer carrier
5 and a finding by the commissioner that either the
6 suspension is reasonable in light of the financial
7 condition of the carrier or that the suspension would
8 enhance the efficiency and fairness of the marketplace
9 for small employer health insurance.

**§33-16D-12. Equality of terms; preexisting conditions;
continuous coverage restrictions.**

1 Health benefit plans and, to the extent permitted by
2 the federal Employee Retirement Income Security Act
3 (ERISA), other benefit arrangements covering small
4 employers shall be subject to the following provisions:

5 (a) Preexisting conditions provisions may not
6 exclude coverage for a period beyond twelve months
7 following an individual's effective date of coverage and
8 may only relate to conditions which had, during the
9 twelve months immediately preceding the effective
10 date of coverage, manifested themselves in such a
11 manner as would cause an ordinarily prudent person
12 to seek medical advice, diagnosis, care or treatment or
13 for which medical advice, diagnosis, care or treatment
14 was recommended or received, or as to a pregnancy
15 existing on the effective date of coverage.

16 (b) In determining whether a preexisting condition
17 limitation provision applies to an eligible employee or
18 dependent, all health benefit plans shall credit the
19 time such person was covered under a previous
20 employer-based health benefit plan, a comparable

21 individual health benefit plan, or a self-insured plan if
22 the previous coverage was continuous to a date not
23 more than thirty days prior to the effective date of the
24 new coverage, exclusive of any applicable waiting
25 period under such plan.

26 (c) Subject to subsections (a) and (b) of this section,
27 when a small group employer converts its health
28 benefit plan from one health benefit plan to another
29 health benefit plan or from one carrier to another
30 carrier, all eligible employees who at the time of
31 conversion are covered by the health benefit plan shall
32 be offered health benefits coverage under the subse-
33 quent plan, and no employee who at the time of
34 conversion is covered by a health benefit plan offered
35 by said employer may be treated any differently
36 relative to other covered employees under the new
37 health benefit plan than he or she is treated under the
38 current health benefit plan.

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

§33-16E-1. Scope of article.

1 The provisions of this article shall apply to all
2 limited benefits policies and certificates in force on the
3 effective date of this article, as well as to any limited
4 benefits policy or certificate delivered or issued for
5 delivery in this state after the effective date hereof.

§33-16E-2. Definitions.

1 For purposes of this article:

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

13 certificate” for purposes of this article:

14 (1) Credit accident and sickness insurance;

15 (2) Long-term care insurance;

16 (3) Medicare supplement insurance; and

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

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

28 (c) “Successive experience period” means the expe-
29 rience period beginning on the first day following the
30 end of the preceding experience period.

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

1 (a) To be eligible to make a premium rate increase
2 request after the first day of July, one thousand nine
3 hundred ninety-three, any insurer offering a limited
4 benefits policy form or certificate form in West
5 Virginia shall be expected to return to policyholders
6 and certificateholders in the form of five-year aggre-
7 gate loss ratios under the policy form or certificate
8 form:

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

11 (2) At least sixty-five percent of the earned premi-
12 ums in the case of an individual policy; and

13 (3) At least fifty-five percent of the earned premi-
14 ums in the case of an individual or group accident and
15 sickness disability policy or certificate.

16 (b) With respect to a policy form or certificate form

17 which has been offered by an insurer in West Virginia
18 or nationally for five years or less the insurer may use
19 the anticipated loss ratio filed with and approved by
20 the commissioner for that form to determine com-
21 pliance with the requirements of this section.

22 (c) For purposes of this section, limited benefits
23 policies and certificates issued as a result of solicitation
24 of individuals through the mail or mass media adver-
25 tising, including both print and broadcast advertising,
26 shall be treated as individual policies.

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

1 (a) Beginning on the first day of July, one thousand
2 nine hundred ninety-four, any insurer offering a
3 limited benefits policy or certificate in West Virginia
4 shall make premium refunds to policyholders and
5 certificateholders if it fails to return to such policy-
6 holders and certificateholders in the form of annual
7 loss ratios under the policy or certificate:

8 (1) At least sixty-five percent of the earned premi-
9 ums in the case of a group policy or certificate;

10 (2) At least fifty-five percent of the earned premi-
11 ums in the case of an individual policy; and

12 (3) At least forty-five percent of the earned premi-
13 ums in the case of an individual or group accident and
14 sickness disability policy or certificate.

15 (b) With respect to a policy form or certificate form
16 which has been offered by an insurer either in West
17 Virginia or nationally for more than five years,
18 refunds to West Virginia policyholders or certificate-
19 holders made pursuant to the requirements of this
20 section and based upon annual earned premium
21 volume in West Virginia shall be calculated by multi-
22 plying the anticipated loss ratio by the applicable
23 earned premium during the experience period and
24 subtracting from that result the actual incurred claims
25 during the experience period.

26 (c) With respect to a policy form or certificate form

27 which has been offered by an insurer for more than
28 five years, refunds to West Virginia policyholders or
29 certificateholders made pursuant to the requirements
30 of this section and based upon national annual earned
31 premium volume shall be calculated by:

32 (1) Multiplying the anticipated loss ratio by the
33 applicable earned premium during the experience
34 period and subtracting from that result the actual
35 incurred claims during the experience period; and

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

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

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

50 (e) Refunds shall be made to all West Virginia
51 policyholders and certificateholders who are insured
52 under the applicable policy form or certificate as of
53 the last day of the experience period. Such refund
54 shall include interest, at the current accident and
55 health reserve interest rate established by the national
56 association of insurance commissioners, from the end
57 of the experience period until the date of payment.
58 Payment shall be made during the third quarter of the
59 year following the experience period for which a
60 refund is determined to be due.

61 (f) Refunds of less than ten dollars shall be aggregat-
62 ed and held by the insurer in a policyholders' and
63 certificateholders' liability fund and shall be used to
64 offset any future rate increases.

§33-16E-5. Statement of actual loss ratios to be filed with commissioner; form; examinations.

1 (a) Every insurer offering limited benefits policy
2 forms or certificate forms which have been in effect
3 for five years or more in West Virginia shall file with
4 the commissioner, on or before the first day of
5 September of each year, a statement of the actual loss
6 ratios for each policy form or certificate form issued in
7 this state. Such statement shall be made under the
8 oath of the insurer's president or other authorized
9 officer on a form prescribed by the commissioner.

10 (b) The commissioner shall have the authority to
11 examine the records and files of any insurer offering
12 limited benefits policy forms or certificate forms in
13 West Virginia to determine compliance with the
14 provisions of this article.

§33-16E-6. Notice of cancellation or nonrenewal.

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

§33-16E-7. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies or certificates.

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

9 (b) If a limited benefits policy or certificate replaces
10 another limited benefits policy or certificate providing
11 similar coverage that has been in effect for at least six
12 months, the replacing policy may not provide any time

13 periods applicable to preexisting conditions, waiting
14 periods, elimination periods and probationary periods.

§33-16E-8. Extraterritorial jurisdiction.

1 (a) No limited benefits policy or certificate may be
2 offered to a resident of this state under a policy issued
3 in another state, unless this state or another state
4 having statutory and regulatory limited benefits policy
5 or certificate requirements substantially similar to
6 those adopted in this state has made a determination
7 that such requirements have been met.

8 (b) Any such limited benefits policy form or certif-
9 icate form offered to a resident of this state under a
10 policy issued in another state shall be filed with the
11 insurance commissioner.

§33-16E-9. Applicability of other provisions.

1 Except as otherwise provided, and except where the
2 context clearly requires otherwise, all the provisions of
3 article fifteen of this chapter are applicable to individ-
4 ual limited benefits policies and all provisions of
5 article sixteen of this chapter are applicable to group
6 limited benefits policies and certificates.

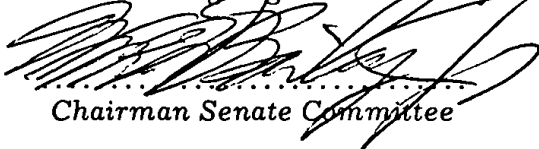
§33-16E-10. Commissioner to promulgate rules.

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

§33-16E-11. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is for any
3 reason held to be invalid, the remainder of the article
4 and application of such provision to other persons or
5 circumstances shall not be affected thereby.

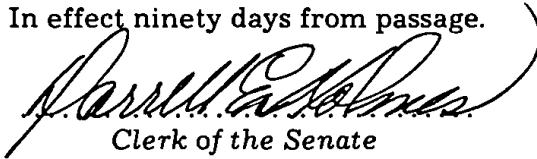
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

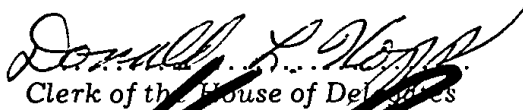

.....
Chairman Senate Committee

.....Ernest C. Moore.....
Chairman House Committee

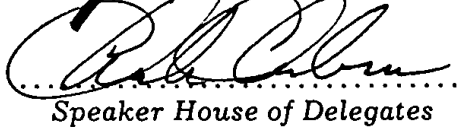
Originated in the Senate.

In effect ninety days from passage.

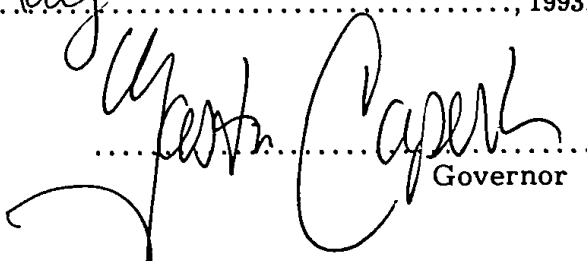

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 12th
day of May, 1993.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/93

Time 1:37 PM