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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



# ENROLLED

## House Bill No. 4670

(By Delegates Beane, Staton, Michael,  
Amores, Trump and G. White)



Passed March 7, 2002

In Effect Ninety Days from Passage

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### H. B. 4670

(BY DELEGATES BEANE, STATON, MICHAEL,  
AMORES, TRUMP AND G. WHITE)

[Passed March 7, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to construction of insurance policies; setting forth legislative findings and clarifying that specific line item premium discounts are not required.

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

That section thirty, article six, 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 6. THE INSURANCE POLICY.

##### §33-6-30. Construction of policies.

- 1 (a) Every insurance contract shall be construed according to
- 2 the entirety of its terms and conditions as set forth in the policy
- 3 and as amplified, extended or modified by any rider, endorse-
- 4 ment or application attached to and made a part of the policy:
- 5 *Provided*, That the word "physician" when used in any accident
- 6 and sickness policy or other contract providing for the payment

7 of surgical procedures shall be construed to include a physician,  
8 dentist or chiropodist-podiatrist performing surgical procedures  
9 or chiropractor performing other health care services within the  
10 scope of his or her professional license: *Provided, however,*  
11 That any policy of insurance or medical or health service con-  
12 tract providing for payment or reimbursement for any profes-  
13 sional services pertaining to eye examination, refractions or the  
14 fitting of corrective lenses shall be construed to include pay-  
15 ment or reimbursement for professional services rendered by  
16 either a duly licensed physician or a duly licensed optometrist,  
17 within the scope of their respective professional licenses, and  
18 that the insured or subscriber have freedom of choice to select  
19 either a physician or an optometrist to render or perform profes-  
20 sional services.

21 (b) The Legislature finds:

22 (1) That consumers and insurers both benefit from the legis-  
23 lative mandate that the insurance commissioner approve the  
24 forms used and the rates charged by insurance companies in this  
25 state;

26 (2) That certain classes of persons are seeking refunds of  
27 insurance premiums and seeking to void exclusions and other  
28 policy provisions on the basis that insurance companies alleg-  
29 edly failed to provide or demonstrate a reduction in premiums  
30 charged in relation to certain terms or exclusions incorporated  
31 into policies of insurance;

32 (3) That historically, as a prerequisite to a rate or form  
33 being approved, neither the Legislature nor the insurance com-  
34 missioner has ever required that the insurer demonstrate that  
35 there was a specific premium reduction for certain exclusions  
36 incorporated into policies of insurance;

37 (4) That the provisions of this chapter were enacted with  
38 the intent of requiring the filing of all rates and forms with the  
39 insurance commissioner to enable the insurance commissioner  
40 to review and regulate rates and forms in a fair and consistent  
41 manner;

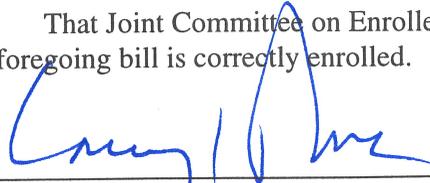
42 (5) That the provisions of this chapter do not provide and  
43 were not intended to provide the basis for monetary damages in  
44 the form of premium refunds or partial premium refunds when  
45 the form used and the rates charged by the insurance company  
46 have been approved by the insurance commissioner;

47 (6) That actions seeking premium refunds or partial pre-  
48 mium refunds have a severe and negative impact upon insurers  
49 operating in this state by imposing unexpected liabilities when  
50 insurers have relied upon the insurance commissioner's ap-  
51 proval of the forms used and the rates charged insureds; and

52 (7) That it is in the best interest of the citizens of this state  
53 to ensure a stable insurance market.

54 (c) Nothing in this chapter may be construed as requiring  
55 specific line item premium discounts or rate adjustments corre-  
56 sponding to any exclusion, condition, definition, term or limita-  
57 tion in any policy of insurance, including policies incorporating  
58 statutorily mandated benefits or optional benefits which as a  
59 matter of law must be offered. Where any insurance policy  
60 form, including any endorsement thereto, has been approved by  
61 the commissioner, and the corresponding rate has been ap-  
62 proved by the commissioner, there is a presumption that the  
63 policy forms and rate structure are in full compliance with the  
64 requirements of this chapter. It is the intent of the Legislature  
65 that the amendments in this section enacted during the regular  
66 session of two thousand two are: (1) A clarification of existing  
67 law as previously enacted by the Legislature, including, but not  
68 limited to, the provisions of subsection (k), section thirty-one of  
69 this article; and, (2) specifically intended to clarify the law and  
70 correct a misinterpretation and misapplication of the law that  
71 was expressed in the holding of the Supreme Court of Appeals  
72 of West Virginia in the case of Mitchell v. Broadnax, 537  
73 S.E.2d 882 (W.Va. 2000). These amendments are a clarification  
74 of the existing law as previously enacted by this Legislature.

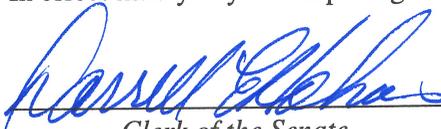
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

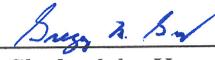
  
\_\_\_\_\_  
Chairman Senate Committee

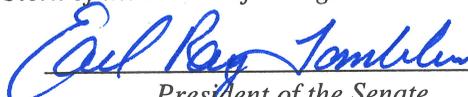
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 15<sup>th</sup>  
day of March, 2002.

  
\_\_\_\_\_  
Governor

PRESENTED BY

GOVERNOR

Date 3/1/02

Time 4:05