

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2690

BY DELEGATES WESTFALL, AZINGER, NELSON, WILLIAMS

AND PORTERFIELD

[Introduced January 28, 2019; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §33-26A-19 of the Code of West Virginia, 1931, as amended,
2 relating to guaranty associations; and making revisions consistent with the National
3 Association of Insurance Commissioners Life and Health Insurance Guaranty Association
4 Model Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY

§33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.

1 (a) A person, including a member insurer, agent, or affiliate of a member insurer, shall not
2 make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to
3 be made, published, disseminated, circulated, or placed before the public, in any newspaper,
4 magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or
5 over any radio station or television station, or in any other way, any advertisement,
6 announcement, or statement, written or oral, which uses the existence of the insurance guaranty
7 association of this state for the purpose of sales, solicitation, or inducement to purchase any form
8 of insurance or other coverage covered by the West Virginia Life and Health Insurance Guaranty
9 Association Act: *Provided*, That this section shall not apply to the association or any other entity
10 which does not sell or solicit insurance or coverage by a health maintenance organization.

11 (b) Within 180 days of the effective date of this article, the association shall prepare a
12 summary document describing the general purposes and current limitations of the act and
13 complying with §33-26A-19(c) of this code. This document ~~should~~ shall be submitted to the
14 commissioner for approval. Sixty days after receiving such approval, no member insurer may
15 deliver a policy or contract described in §33-26A-3(b)(1) of this code to a policy owner, contract
16 owner, certificate holder, or enrollee unless the summary document is delivered to the policy
17 owner, contract owner, certificate holder, or enrollee prior to or at the time of delivery of the policy
18 or contract. ~~except if §33-26A-19(d) of this code applies~~ The document ~~should~~ shall also be

19 available upon request by a policy owner, contract owner, certificate holder, or enrollee. The
20 distribution, delivery, or contents or interpretation of this document shall not guarantee that either
21 the policy or the contract or the policy owner, contract owner, certificate holder, or enrollee is
22 covered in the event of the impairment or insolvency of a member insurer. The description
23 document shall be revised by the association as amendments to the article may require. Failure
24 to receive this document does not give the policy owner, contract owner, certificate holder,
25 enrollee, or insured any greater rights than those stated in this article.

26 (c) The document prepared under §33-26A-19(b) of this code shall contain a clear and
27 conspicuous disclaimer on its face. ~~The commissioner shall propose rules for legislative approval~~
28 ~~in accordance with the provisions of §29A-3-1 et seq. of this code establishing the form and~~
29 ~~content of the disclaimer.~~ The commissioner shall establish the form and content of the disclaimer.

30 The disclaimer shall:

31 (1) State the name and address of the association and insurance department;

32 (2) Prominently warn the policy owner, contract owner, certificate holder, or enrollee that
33 the association may not cover the policy or contract or, if coverage is available, it will be subject
34 to substantial limitations and exclusions and conditioned on continued residence in the state;

35 (3) State the types of policies or contracts for which guaranty funds will provide coverage;

36 (4) State that the member insurer and its agents are prohibited by law from using the
37 existence of the association for the purpose of sales, solicitation, or inducement to purchase any
38 form of insurance or health maintenance organization coverage;

39 (5) Emphasize that the policy owner, contract owner, certificate holder, or enrollee should
40 not rely on coverage under the association when selecting an insurer or health maintenance
41 organization;

42 (6) Explain rights available and procedures for filing a complaint to allege a violation of
43 any provisions of this article; and

44 (7) Provide other information as directed by the commissioner.

45 ~~(d) An insurer or agent may not deliver a policy or contract described in §33-26A-3(b)(1)~~
46 ~~of this code and excluded under §33-26A-3(b)(2)(A) of this code from coverage under this article~~
47 ~~unless the insurer or agent, prior to or at the time of delivery, gives the policy owner, contract~~
48 ~~owner, certificate holder, or enrollee a separate written notice which clearly and conspicuously~~
49 ~~discloses that the policy or contract is not covered by the association. The commissioner shall~~
50 ~~propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this~~
51 ~~code specifying the form and content of the notice. A member insurer shall retain evidence of~~
52 ~~compliance with §33-26A-19(b) of this code for so long as the policy or contract for which the~~
53 ~~notice is given remains in effect.~~

NOTE: The purpose of this bill is to update Article 26A to maintain consistency with the National Association of Insurance Commissioners Life and Health Insurance Guaranty Association Model Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.