WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1986

ENROLLED

HOUSE BILL No. 149

(By Mr. Del. Shepherd and Del. Damron)

Passed May 22, 1986

In Effect from Passage
ENROLLED

H. B. 149

(By Delegate Shepherd and Delegate Damron)

[Passed May 22, 1986; in effect from passage.]

AN ACT to amend and reenact section two, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four and six, article twenty-b of said chapter thirty-three; to amend and reenact sections two, three, four and five, article twenty-c of said chapter thirty-three; to amend and reenact sections eight, nine and ten, article seven-b, chapter fifty-five of said code; and to further amend said article seven-b by adding thereto one new section, designated section eleven, relating to professional liability generally; describing the scope of article pertaining to rates and rating organizations; correcting an erroneous section reference in section two, article twenty, chapter thirty-three of said code; describing the scope of article pertaining to rates and malpractice insurance policies; restricting the scope of article twenty-b, chapter thirty-three of said code to medical malpractice insurance policies only; establishing procedures for disapproval of filings; requiring the commissioner to hold a public hearing within the initial sixty day waiting period on certain filings which request a rate increase; providing for review by the commissioner of rules, rates and rating plans; requiring insurers to submit to the commissioner certain information annually; deleting provisions of the law which require reporting as to individual cases and authorizing reporting in aggregate figures; requiring the commissioner, by legislative rule, to establish methods of allocating investment and other
income; describing the circumstances under which a policy of malpractice may be cancelled; deleting provisions of the law relating to prohibitions on nonrenewals of insurance policies; requiring insurers to provide reasons for cancellation; requiring a notice period for cancellation; requiring a sixty day notice in the case of a nonrenewal of a policy or contract providing malpractice insurance; providing for hearings and review to insured persons aggrieved by cancellations; establishing a limit on liability for noneconomic loss in a medical professional liability action, and deleting from the law a provision which made an instruction to the jury as to the maximum amount recoverable for such loss mandatory; providing for the manner in which joint and several liability shall be determined in a medical professional liability action involving multiple defendants; describing when provisions become effective; providing that the provisions of article seven-b, chapter fifty-five of said code shall not be applicable to injuries which occur before the effective date; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, four and six, article twenty-b of said chapter thirty-three be amended and reenacted; that sections two, three, four and five, article twenty-c of said chapter thirty-three be amended and reenacted; that sections eight, nine and ten, article seven-b, chapter fifty-five of said code be amended and reenacted; and that said article seven-b be further amended by adding thereto a new section, designated section eleven, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-2. Scope of article.

(a) This article applies to fire, marine, casualty, and surety insurance, on risks or operations in this state.

(b) This article shall not apply:
(1) To reinsurance, other than joint reinsurance to the extent stated in section eleven of this article;

(2) To life or accident and sickness insurance;

(3) To insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

(4) To insurance against loss of or damage to aircraft, including their accessories and equipment, or against liability, other than worker's compensation and employer's liability, arising out of the ownership, maintenance or use of aircraft;

(5) To title insurance;

(6) To malpractice insurance insofar as the provisions of this article directly conflict and thereby are supplanted by article twenty-b of this chapter.

c) If any kind of insurance, subdivision or combination thereof, or type of coverage, is subject to both the provisions of this article expressly applicable to casualty and surety insurance and to those expressly applicable to fire and marine insurance, the commissioner may apply to filings made for such kind of insurance the provisions of this article which are in his judgment most suitable.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-1. Scope of article.

This article applies to medical malpractice insurance policies only. Nothing in this article shall be construed to supplant any provision of article twenty of this chapter which does not directly conflict with the provisions herein.

§33-20B-4. Disapproval of filings.

(a) If within the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he shall send to
the insurer or rating organization which made such
filing written notice of disapproval of such filing
specifying therein in what respects he finds such filing
fails to meet the requirements of this article and stating
that such filing shall not be effective. Within thirty days
from the issuance of written notice of disapproval, any
insurer or rating organization aggrieved by such
disapproval of any filing may request a hearing thereon
pursuant to section thirteen, article two of this chapter.

(b) If at any time subsequent to the waiting period or
any extension thereof as provided in subsection (b),
section three of this article, the commissioner finds that
a filing does not meet the requirements of this article,
he shall send to the insurer or rating organization which
made such filing a written order specifying in what
respect he finds that such filing fails to meet the
requirements of this article and a date, not less than
thirty days from the issuance of such order, when such
filing shall be deemed no longer effective. Within thirty
days from the issuance of such order, any insurer or
rating organization aggrieved by such order may
request a hearing thereon pursuant to section thirteen,
article two of this chapter. Any such order shall not
affect any contract or policy made or issued prior to the
expiration date set forth in such order.

(c) Any person or organization aggrieved by any filing
which is in effect or the application thereof may request
a hearing thereon pursuant to section thirteen, article
two of this chapter. The insurer or rating organization
which made such filing shall be notified in writing upon
receipt of any such request for hearing and thereby
made a party to such hearing. Upon such hearing, if the
commissioner finds that such filing fails to meet the
requirements of this article, he shall issue an order
specifying in what respects he so finds and a date, not
less than thirty days from the issuance of such order,
when such filings shall be deemed no longer effective.

(d) Within the initial sixty-day waiting period, the
commissioner shall hold a public hearing upon every
filing which requests an increase in general rates of ten
percent or more and upon every filing which, in the
opinion of the commissioner, is of such import that it will affect the public. The insurer or rating organization which made such filing shall be notified in writing not less than fifteen days prior to the hearing date. Notice of the time, place and filing to be considered shall be published as a Class II legal advertisement in every county in the state in accordance with article three, chapter fifty-nine of this code.

§33-20B-6. Rate review and reporting.

(a) The commissioner shall review annually the rules, rates and rating plans filed and in effect for each insurer providing five percent or more of the malpractice insurance coverage in this state in the preceding calendar year to determine whether such filings continue to meet the requirements of this article and whether such filings are unfair or inappropriate given the loss experience in this state in the preceding year.

Within two hundred forty days of the effective date of this article, the commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code, establishing procedures for the fair and appropriate evaluation and determination of the past loss experience and prospective or projected loss experience of insurers within and outside this state, actual past expenses incurred in this state and demonstrable prospective or projected expenses applicable to this state.

(b) Within one hundred eighty days of the effective date of this article, the commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code, establishing procedures whereby each insurer providing five percent or more of the malpractice insurance coverage in this state annually shall submit to the commissioner the following information:

(1) The number of claims filed per category;
(2) The number of civil actions filed;
(3) The number of civil actions compromised or settled;
(4) The number of verdicts in civil actions;
(5) The number of civil actions appealed;
(6) The number of civil actions dismissed;
(7) The total dollar amount paid in claims compromised or settled;
(8) The total dollar amount paid pursuant to verdicts in civil actions;
(9) The number of claims closed without payment and the amount held in reserve for all such claims;
(10) The total dollar amount expended for loss adjustment expenses, commissions and brokerage expenses;
(11) The total dollar amount expended in defense and litigation of claims;
(12) The total dollar amount held in reserve for anticipated claims;
(13) Net profit or loss;
(14) Investment and other income on net realized capital gains and loss reserves and unearned premiums; and
(15) The number of malpractice insurance policies canceled for reasons other than nonpayment of premiums.

The commissioner shall establish in such rules methods of allocating investment and other income among capital gains, loss reserves, unearned premiums and other assets if an insurer does not separately account for and allocate such income.

Any insurer who fails to submit any and all such information to the commissioner as required by this subsection in accordance with the regulations promulgated hereunder shall be fined ten thousand dollars for each of the first five such failures per year and shall be fined one hundred thousand dollars for the sixth and each subsequent such failure per year.
Beginning in the year one thousand nine hundred eighty-six, the commissioner shall report annually during the month of November to the joint standing committee on the judiciary the following information pertaining to each insurer providing five percent or more of the malpractice insurance coverage in this state:

1. The loss experience within the state during the preceding calendar year;
2. The rules, rates and rating plans in effect on the date of such report;
3. The investment portfolio, including reserves, and the annual rate of return thereon;
4. The information submitted to the commissioner pursuant to the regulations promulgated by authority of subsection (b) of this section.

ARTICLE 20C. CANCELLATION AND NONRENEWAL OF MALPRACTICE INSURANCE POLICIES.

§33-20C-2. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing malpractice insurance in this state shall cancel such policy, except for one or more of the following reasons:

(a) The named insured fails to discharge any of his obligations to pay premiums for such policy or any installment thereof within a reasonable time of the due date;
(b) The policy was obtained through material misrepresentation;
(c) The insured violates any of the material terms and conditions of the policy;
(d) The insured's experiences render him an increased risk;
(e) The unavailability of reinsurance, upon sufficient proof thereof being supplied to the commissioner.

Any purported cancellation of a policy providing
§33-20C-3. Insurer to specify reasons for cancellation.

In every instance in which a policy or contract of malpractice insurance is canceled by the insurer, the insurer or his duly authorized agent shall cite within the written notice of the action the allowable reason in section two of this article for which such action was taken and shall state with specificity the circumstances giving rise to the allowable reason so cited. The notice of the action shall further state that the insured has a right to request a hearing pursuant to section five of this article within thirty days.

§33-20C-4. Notice period for cancellation; sixty day notice required for nonrenewal.

(a) No insurer shall fail to renew a policy or contract providing malpractice insurance unless written notice of such nonrenewal is forwarded to the insured by certified mail, return receipt requested, not less than sixty days prior to the expiration date of such policy.

(b) No insurer shall cancel a policy or contract providing malpractice insurance during the term of such policy unless written notice of such cancellation is forwarded to the insured by certified mail, return receipt requested, not more than thirty days after the reason for such cancellation, as provided in section two of this article, arose or occurred or the insurer learned that it arose or occurred and not less than thirty days prior to the effective cancellation date.

§33-20C-5. Hearings and review.

Any insured aggrieved by the cancellation of a policy or contract providing malpractice insurance may request a hearing before the commissioner or his designee within thirty days of the receipt of any such notice. The hearing shall be conducted pursuant to section thirteen, article two of this chapter. The policy shall remain in effect until entry of the commissioner's order. Any party aggrieved by an order of the commissioner may seek judicial review in the circuit court of
the county in which the insured resides in accordance
with section fourteen, article two of this chapter.

CHAPTER 55. ACTIONS, SUITS AND
ARBITRATION; JUDICIAL SALE.

ARTICLE 7. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-8. Limit on liability for noneconomic loss.
1 In any medical professional liability action brought
2 against a health care provider, the maximum amount
3 recoverable as damages for noneconomic loss shall not
4 exceed one million dollars and the jury may be so
5 instructed.

§55-7B-9. Joint and several liability.
1 (a) In the trial of a medical professional liability
2 action against a health care provider involving multiple
3 defendants, the jury shall be required to report its
4 findings to the court on a form provided by the court
5 which contains each of the possible verdicts as deter-
6 mined by the court.
7 (b) In every medical professional liability action, the
8 court shall make findings as to the total dollar amount
9 awarded as damages to each plaintiff. The court shall
10 enter judgment of joint and several liability against
11 every defendant which bears twenty-five percent or
12 more of the negligence attributable to all defendants.
13 The court shall enter judgment of several, but not joint,
14 liability against and among all defendants which bear
15 less than twenty-five percent of the negligence attribu-
16 table to all defendants.
17 (c) Each defendant against whom a judgment of joint
18 and several liability is entered in a medical professional
19 liability action pursuant to subsection (b) of this section
20 is liable to each plaintiff for all or any part of the total
21 dollar amount awarded regardless of the percentage of
22 negligence attributable to him. A right of contribution
23 exists in favor of each defendant who has paid to a
24 plaintiff more than the percentage of the total dollar
25 amount awarded attributable to him relative to the
26 percentage of negligence attributable to him. The total
amount of recovery for contribution is limited to the amount paid by the defendant to a plaintiff in excess of the percentage of the total dollar amount awarded attributable to him relative to the percentage of negligence attributable to him. No right of contribution exists against any defendant who entered into a good faith settlement with the plaintiff prior to the jury's report of its findings to the court or the court's findings as to the total dollar amount awarded as damages.

(d) Where a right of contribution exists in a medical professional liability action pursuant to subsection (c) of this section, the findings of the court or jury as to the percentage of negligence and liability of the several defendants to the plaintiff shall be binding among such defendants as determining their rights of contribution.

§55-7B-10. Effective date; applicability of provisions.

The provisions of House Bill 149, enacted during the first extraordinary session of the Legislature, 1986, shall be effective at the same time that the provisions of Enrolled Senate Bill 714, enacted during the Regular session, 1986, become effective, and the provisions of said House Bill 149 shall be deemed to amend the provisions of Enrolled Senate Bill 714. The provisions of this article shall not apply to injuries which occur before the effective date of said Enrolled Senate Bill 714.


If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 25th day of May, 1986.

Governor