

No: 149

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DEPARTMENT OF COMMERCE

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1986

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ENROLLED

HOUSE BILL No. 149

(By Mr. Del. Shepherd & Del. Danson)

— ● —

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.

- 1 (a) This article applies to fire, marine, casualty, and
- 2 surety insurance, on risks or operations in this state.
- 3 (b) This article shall not apply:

4 (1) To reinsurance, other than joint reinsurance to the
5 extent stated in section eleven of this article;

6 (2) To life or accident and sickness insurance;

7 (3) To insurance of vessels or craft, their cargoes,
8 marine builders' risks, marine protection and indem-
9 nity, or other risks commonly insured under marine, as
10 distinguished from inland marine, insurance policies;

11 (4) To insurance against loss of or damage to aircraft,
12 including their accessories and equipment, or against
13 liability, other than worker's compensation and employ-
14 er's liability, arising out of the ownership, maintenance
15 or use of aircraft;

16 (5) To title insurance;

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

20 (c) If any kind of insurance, subdivision or combina-
21 tion thereof, or type of coverage, is subject to both the
22 provisions of this article expressly applicable to casualty
23 and surety insurance and to those expressly applicable
24 to fire and marine insurance, the commissioner may
25 apply to filings made for such kind of insurance the
26 provisions of this article which are in his judgment most
27 suitable.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-1. Scope of article.

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

§33-20B-4. Disapproval of filings.

1 (a) If within the waiting period or any extension
2 thereof as provided in subsection (b), section three of this
3 article, the commissioner finds that a filing does not
4 meet the requirements of this article, he shall send to

5 the insurer or rating organization which made such
6 filing written notice of disapproval of such filing
7 specifying therein in what respects he finds such filing
8 fails to meet the requirements of this article and stating
9 that such filing shall not be effective. Within thirty days
10 from the issuance of written notice of disapproval, any
11 insurer or rating organization aggrieved by such
12 disapproval of any filing may request a hearing thereon
13 pursuant to section thirteen, article two of this chapter.

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

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

42 (d) Within the initial sixty-day waiting period, the
43 commissioner shall hold a public hearing upon every
44 filing which requests an increase in general rates of ten
45 percent or more and upon every filing which, in the

46 opinion of the commissioner, is of such import that it
47 will affect the public. The insurer or rating organization
48 which made such filing shall be notified in writing not
49 less than fifteen days prior to the hearing date. Notice
50 of the time, place and filing to be considered shall be
51 published as a Class II legal advertisement in every
52 county in the state in accordance with article three,
53 chapter fifty-nine of this code.

§33-20B-6. Rate review and reporting.

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

9 Within two hundred forty days of the effective date
10 of this article, the commissioner shall promulgate
11 legislative rules pursuant to article three, chapter
12 twenty-nine-a of this code, establishing procedures for
13 the fair and appropriate evaluation and determination
14 of the past loss experience and prospective or projected
15 loss experience of insurers within and outside this state,
16 actual past expenses incurred in this state and demon-
17 strable prospective or projected expenses applicable to
18 this state.

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

27 (1) The number of claims filed per category;

28 (2) The number of civil actions filed;

29 (3) The number of civil actions compromised or
30 settled;

- 31 (4) The number of verdicts in civil actions;
32 (5) The number of civil actions appealed;
33 (6) The number of civil actions dismissed;
34 (7) The total dollar amount paid in claims comprom-
35 ised or settled;
36 (8) The total dollar amount paid pursuant to verdicts
37 in civil actions;
38 (9) The number of claims closed without payment and
39 the amount held in reserve for all such claims;
40 (10) The total dollar amount expended for loss
41 adjustment expenses, commissions and brokerage
42 expenses;
43 (11) The total dollar amount expended in defense and
44 litigation of claims;
45 (12) The total dollar amount held in reserve for
46 anticipated claims;
47 (13) Net profit or loss;
48 (14) Investment and other income on net realized
49 capital gains and loss reserves and unearned premiums;
50 and
51 (15) The number of malpractice insurance policies
52 canceled for reasons other than nonpayment of
53 premiums.
- 54 The commissioner shall establish in such rules
55 methods of allocating investment and other income
56 among capital gains, loss reserves, unearned premiums
57 and other assets if an insurer does not separately
58 account for and allocate such income.
- 59 Any insurer who fails to submit any and all such
60 information to the commissioner as required by this
61 subsection in accordance with the regulations promul-
62 gated hereunder shall be fined ten thousand dollars for
63 each of the first five such failures per year and shall be
64 fined one hundred thousand dollars for the sixth and
65 each subsequent such failure per year.

66 (c) Beginning in the year one thousand nine hundred
67 eighty-six, the commissioner shall report annually
68 during the month of November to the joint standing
69 committee on the judiciary the following information
70 pertaining to each insurer providing five percent or
71 more of the malpractice insurance coverage in this state:

72 (1) The loss experience within the state during the
73 preceding calendar year;

74 (2) The rules, rates and rating plans in effect on the
75 date of such report;

76 (3) The investment portfolio, including reserves, and
77 the annual rate of return thereon; and

78 (4) The information submitted to the commissioner
79 pursuant to the regulations promulgated by authority of
80 subsection (b) of this section.

**ARTICLE 20C. CANCELLATION AND NONRENEWAL OF MAL-
PRACTICE INSURANCE POLICIES.**

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

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

5 (a) The named insured fails to discharge any of his
6 obligations to pay premiums for such policy or any
7 installment thereof within a reasonable time of the due
8 date;

9 (b) The policy was obtained through material
10 misrepresentation;

11 (c) The insured violates any of the material terms and
12 conditions of the policy;

13 (d) The insured's experiences render him an increased
14 risk;

15 (e) The unavailability of reinsurance, upon sufficient
16 proof thereof being supplied to the commissioner.

17 Any purported cancellation of a policy providing

18 malpractice insurance attempted in contravention of
19 this section shall be void.

§33-20C-3. Insurer to specify reasons for cancellation.

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

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

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

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

§33-20C-5. Hearings and review.

1 Any insured aggrieved by the cancellation of a policy
2 or contract providing malpractice insurance may
3 request a hearing before the commissioner or his
4 designee within thirty days of the receipt of any such
5 notice. The hearing shall be conducted pursuant to
6 section thirteen, article two of this chapter. The policy
7 shall remain in effect until entry of the commissioner's
8 order. Any party aggrieved by an order of the commis-
9 sioner may seek judicial review in the circuit court of

10 the county in which the insured resides in accordance
11 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

27 amount of recovery for contribution is limited to the
28 amount paid by the defendant to a plaintiff in excess of
29 the percentage of the total dollar amount awarded
30 attributable to him relative to the percentage of
31 negligence attributable to him. No right of contribution
32 exists against any defendant who entered into a good
33 faith settlement with the plaintiff prior to the jury's
34 report of its findings to the court or the court's findings
35 as to the total dollar amount awarded as damages.

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

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

1 The provisions of House Bill 149, enacted during the
2 first extraordinary session of the Legislature, 1986, shall
3 be effective at the same time that the provisions of
4 Enrolled Senate Bill 714, enacted during the Regular
5 session, 1986, become effective, and the provisions of
6 said House Bill 149 shall be deemed to amend the
7 provisions of Enrolled Senate Bill 714. The provisions
8 of this article shall not apply to injuries which occur
9 before the effective date of said Enrolled Senate Bill
10 714.

§55-7B-11. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid,
3 such invalidity shall not affect other provisions or
4 applications of this article, and to this end the provisions
5 of this article are declared to be severable.

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

Reuben W. Davis

Chairman Senate Committee

Floyd Fuller

Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Wells

Clerk of the Senate

Donald J. Kopp

Clerk of the House of Delegates

Sam Tenkewich

President of the Senate

Joseph P. Albright

Speaker of the House of Delegates

The within *approved* this the *28th* day of *May*, 1986.

Arthur A. Sweeney, Jr.

Governor

PRESENTED TO THE

5/23/86
GOVERNOR

Date: 5/23/86

Time _____

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