WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

HOUSE BILL No. 2789

(By Mr. Del. Sumner & Gallagher)

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Passed March 9, 1991

In Effect 90 Days From Passage
AN ACT to amend article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight; and to amend chapter thirty-three of said code by adding thereto a new article, designated article twenty-d, all relating to professional insurance coverage; reporting to the insurance commissioner; and providing tail coverage.

Be it enacted by the Legislature of West Virginia:

That article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight; and that chapter thirty-three of said code be amended by adding thereto a new article, designated article twenty-d, all to read as follows:

ARTICLE 20B. RATES AND MALPRACTICE POLICIES.

§33-20B-8. Insurers required to report results of civil actions against physicians or podiatrists; penalties for failure to report; notice and hearing.

(a) Every insurer providing professional liability insurance to a physician, osteopathic physician or surgeon, podiatrist, or chiropractor in this state shall submit to the commissioner, within thirty days from any judgment, dismissal, or settlement of a civil action or
any claim involving the insured, the following
information:

(1) The date of any judgment, dismissal, or settlement;

(2) Whether any appeal has been taken on the
judgment and, if so, by which party;

(3) The amount of any settlement or judgment against
the insured; and

(4) Any such other information as the commissioner
may require.

(b) Any insurer that fails to report information on a
payment required to be reported under this section shall
be subject to a civil money penalty to be imposed by the
insurance commissioner. Upon a determination of the
commissioner that there is probable cause to believe that
any person, partnership, corporation, association,
insurance company, professional society or other
organization has failed or refused to make a report
required by this section, the commissioner shall provide
written notice to the alleged violator stating the nature
of the alleged violation and the time and place at which
the alleged violator shall appear to show good cause why
a civil penalty should not be imposed. The hearing shall
be conducted in accordance with the provisions of article
five, chapter twenty-nine-a of this code.

(c) If, after notice and hearing as provided in
subsection (b) herein, the commissioner determines that
a violation of this section has occurred, the commissioner
shall assess a civil penalty of not less than one thousand
dollars nor more than ten thousand dollars against such
violator. Anyone so assessed shall be notified of the
assessment in writing and the notice shall specify the
reasons for the assessment.

(d) If an insurer who has been found to have violated
the provisions of this section fails to pay the amount of
the penalty assessment to the commissioner within
thirty days after issuance of notice of the same, the
attorney general may institute a civil action in the
circuit court of Kanawha County to recover the amount
of the assessment. In any such civil action, the court's
review of the commissioner's action shall be conducted
in accordance with the provisions of section four, article
five, chapter twenty-nine-a of this code.

(e) No person or entity shall be held liable in any civil
action with respect to any report made pursuant to this
section if such report was made without knowledge of
any falsity of the information contained therein.

ARTICLE 20D. TAIL INSURANCE.

§33-20D-1. Scope of article.

This article applies to malpractice insurance as
defined in subdivision nine, subsection e, section ten,
article one of this chapter insuring a medical physician,
osteopathic physician, podiatric physician, chiropractic
physician, dentist, midwife or nurse practitioner which
has been in effect for at least sixty days.

§33-20D-2. Definitions.

As used in this article:

(a) "Tail insurance" means insurance which covers a
professional insured once a claims made malpractice
insurance policy is cancelled, not renewed or terminated
and covers claims made after such cancellation or
termination for acts occurring during the period the
prior malpractice insurance was in effect.

(b) "Claims made malpractice insurance policy"
means a policy which covers claims which are reported
during the policy period, meet the provisions specified
by the policy, and are for an incident which occurred
during the policy period, or occurred prior to the policy
period, as is specified by the policy.

§33-20D-3. Tail insurance to be offered upon cancella-
tion; availability of amortization; minimum
premium rates; penalties for noncom-
pliance.

(a) Upon cancellation, nonrenewal or termination of
any claims made professional malpractice insurance
policy, the insurer shall offer to the insured tail
insurance coverage.
(b) Upon cancellation, nonrenewal or termination of any claims made professional malpractice insurance policy, the insurer shall offer to any professional licensed and practicing in the state of West Virginia, or who, upon retirement, last practiced in the state of West Virginia, the opportunity to amortize the payment of premiums for tail insurance over a period of not more than thirty-six months, in quarterly payments, at a rate to be established by the insurance commissioner: Provided, That quarterly premiums paid pursuant to this subsection shall not be less than seven hundred fifty dollars.

(c) The first quarterly payment shall be payable contemporaneous with the issuance of the tail coverage policy. Subsequent payments shall be due and payable quarterly thereafter. Upon default in making a payment when due, tail coverage shall terminate, and the unpaid portion of the amortized premium shall be immediately due and payable in full.

(d) Any insurer who fails to offer tail insurance or in any other way violates the provisions of this article shall be assessed a penalty equal to the amount of the premium due.

(e) The offer of tail insurance coverage required by this section shall expire forty-five days after the cancellation, termination or other expiration of the claims made professional malpractice insurance policy, unless sooner accepted, in writing, by the insured.

§33-20D-4. Insurance commissioner to promulgate rules; establish amortization rates.

(a) Pursuant to article three, chapter twenty-nine-a of this code, the insurance commissioner shall promulgate legislative rules establishing procedures necessary to effectuate the provisions of this article. The first set of rules shall be promulgated as emergency rules within forty-five days of the effective date of this article.

(b) The insurance commissioner shall promulgate rules and regulations providing for the amortization of premium payments for tail insurance, which rules shall
include, but not be limited to:

(1) Amortization schedules for various periods, but not to exceed a period of thirty-six months;

(2) Reasonable annual amortization rates;

(3) Reasonable annual interest rates;

(4) Such other schedules and rates as the commissioner deems necessary to effect the provisions of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Homer Heck  
Chairman Senate Committee  

Ernest Moore  
Chairman House Committee  

Originating in the House.

Takes 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 1st day of , 1991.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/30/91
Time 5:00 P.M.