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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

HOUSE BILL No. 2789

(By Mr. *Del. Susman + Gallagher*)

— ● —

Passed *March 9,* 1991

In Effect *90 Days From* Passage

ENROLLED
H. B. 2789

(By DELEGATES SUSMAN AND GALLAGHER)

[Passed March 9, 1991; in effect ninety 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.

- 1 (a) Every insurer providing professional liability
- 2 insurance to a physician, osteopathic physician or
- 3 surgeon, podiatrist, or chiropractor in this state shall
- 4 submit to the commissioner, within thirty days from any
- 5 judgment, dismissal, or settlement of a civil action or

6 any claim involving the insured, the following
7 information:

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

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

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

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

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

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

38 (d) If an insurer who has been found to have violated
39 the provisions of this section fails to pay the amount of
40 the penalty assessment to the commissioner within
41 thirty days after issuance of notice of the same, the
42 attorney general may institute a civil action in the
43 circuit court of Kanawha County to recover the amount
44 of the assessment. In any such civil action, the court's

45 review of the commissioner's action shall be conducted
 46 in accordance with the provisions of section four, article
 47 five, chapter twenty-nine-a of this code.

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

ARTICLE 20D. TAIL INSURANCE.

§33-20D-1. Scope of article.

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

§33-20D-2. Definitions.

1 As used in this article:

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

8 (b) "Claims made malpractice insurance policy"
 9 means a policy which covers claims which are reported
 10 during the policy period, meet the provisions specified
 11 by the policy, and are for an incident which occurred
 12 during the policy period, or occurred prior to the policy
 13 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.

1 (a) Upon cancellation, nonrenewal or termination of
 2 any claims made professional malpractice insurance
 3 policy, the insurer shall offer to the insured tail
 4 insurance coverage.

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

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

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

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

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

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

7 (b) The insurance commissioner shall promulgate
8 rules and regulations providing for the amortization of
9 premium payments for tail insurance, which rules shall

10 include, but not be limited to:

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

13 (2) Reasonable annual amortization rates;

14 (3) Reasonable annual interest rates;

15 (4) Such other schedules and rates as the commis-
16 sioner deems necessary to effect the provisions of this
17 article.

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

Homer Seck

Chairman Senate Committee

Bernest C Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell E. Nalms

Clerk of the Senate

Donald L. Hopp

Clerk of the House of Delegates

Heidi Brudette

President of the Senate

Bob Cole

Speaker of the House of Delegates

The within *is approved* this the *1st* day of *April*, 1991.

Yaston Caperton

Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/91

Time 5:00 pm