WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

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ENROLLED

SENATE BILL NO. 37

(By Senator [Senator's Name], Mr. President, et al.)

PASSED _______ April 11, 1997

In Effect NINETY DAYS FROM Passage
AN ACT to amend and reenact section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to further amend said chapter by adding thereto a new article, designated article forty-one, all relating to adding provisions for privileges and immunity to farmers' mutual fire insurance companies; adding provisions for privileges and immunity to hospitals, medical and dental corporations;
and adding provisions that govern scientific, nonprofit institutions; increasing an agent's license fee; adding provisions to be subject to the supervision and regulations of the insurance commissioner; adding provisions for privileges and immunity to health care corporations; adding provisions of exemption for any health maintenance organization considered to be practicing medicine; adding provisions for privileges and immunity to health maintenance organizations; making technical corrections; defining legislative intent; providing for definitions; and providing for privileges and immunity for persons reporting insurance fraud.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


1 Each company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: Article one (definitions); article two (insurance commissioner); article four (general provisions) except that section sixteen of said article shall not be applicable thereto; article seven (assets and liabilities); article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article assessments shall not be levied against any former member of a farmers' mutual fire insurance company who is no longer a member of the company at the time the order to show cause was issued; article eleven (unfair trade practices); article twelve (agents, brokers and solicitors) except that the agent's license fee shall be five dollars; article twenty-six (West
3 Virginia insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty (mine subsidence insurance) except that under the provisions of section six of said article, a farmers' mutual insurance company shall have the option of offering mine subsidence coverage to all of its policyholders but shall not be required to do so; article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-six (business transacted with producer-controlled property/casualty insurer); article thirty-seven (managing general agents); article thirty-nine (disclosure of material transactions); article forty (risk-based capital for insurers); and article forty-one (privileges and immunity); but only to the extent these provisions are not inconsistent with the provisions of this article.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of insurance laws.

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article shall not be applicable thereto; section thirty-four, article six (fee for form and rate filing); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eleven (unfair trade practices); article twelve (agents, brokers and solicitors), except that
the agent’s license fee shall be twenty-five dollars; section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-a (long-term care insurance); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-c, article sixteen (group accident and sickness insurance); section three-d, article sixteen (medicare supplement insurance); section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one; article twenty-seven (insurance holding company systems); article twenty-eight (individual accident and sickness insurance minimum standards); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-
ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.

Corporations organized under this article are subject to supervision and regulation of the insurance commissioner. The corporations organized under this article, to the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated of the following articles of this chapter: Article four (general provisions), except that section sixteen of said article shall not be applicable thereto; article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article ten (rehabilitation and liquidation); section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-c (diabetes insurance); section three, article sixteen (required policy
provisions); section three-a, article sixteen (mental health); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article forty-one (privileges and immunity); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws are not applicable to any health maintenance organization granted a certificate of authority under this article. The provisions of this article shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article. The provisions of this article shall
not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section seven-a of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained in this subsection shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.

(c) Any health maintenance organization authorized under this article shall not be considered to be practicing medicine and is exempt from the provisions of chapter thirty of this code, relating to the practice of medicine.

(d) The provisions of sections fifteen and twenty, article four (general provisions); section seventeen, article six (noncomplying forms); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article nine (administration of deposits); article twelve (agents, brokers, solicitors and excess line); section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of
(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.
(f) A health maintenance organization granted a certificate of authority under this article shall be exempt from paying municipal business and occupation taxes on gross income it receives from its enrollees, or from their employers or others on their behalf, for health care items or services provided directly or indirectly by the health maintenance organization. This exemption applies to all taxable years through the thirty-first day of December, one thousand nine hundred ninety-six. The commissioner and the tax department shall conduct a study of the appropriations of imposition of the municipal business and occupation tax or other tax on health maintenance organizations, and shall report to the regular session of the Legislature, one thousand nine hundred ninety-seven, on their findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate their recommendations.

ARTICLE 41. PRIVILEGES AND IMMUNITY.

§33-41-1. Legislative purpose and findings.

It is the finding of the Legislature that the business of insurance involves many transactions that have potential for fraud, abuse and other illegal activities. It is the further finding of the Legislature that insurance fraud is a crime pursuant to state and federal statutes. The Legislature further finds that state, local and federal law enforcement and regulatory agencies may prosecute fraud in accordance with these statutes, thereby ultimately reducing the cost of insurance fraud to insurers and consumers. It is the purpose of this article to encourage the detection, investigation and prosecution of persons engaging in insurance fraud by providing certain privileges and immunity.

§33-41-2. Definitions.

The following words when used in this article shall have the meanings set forth in this section, unless the context clearly indicates otherwise:

(a) "Authorized agency" means:
(1) The division of public safety of this state, the police department of any municipality, any county sheriff's department and any duly constituted criminal investigative department or agency of the United States or of this state;

(2) The prosecuting attorney of any county of this state or of the United States or any district thereof;

(3) The state insurance commissioner or the commissioner's employees, agents or representatives;

(4) The national association of insurance commissioners; or

(5) A person or agency involved in the prevention and detection of fraud or that person's or agency's agents, employees or representatives.

(b) "Benefits" means money payments, goods, services or any other thing of value.

(c) "Claim" means an application or request for payment or benefits provided under an insurance policy.

(d) "Commissioner" means the insurance commissioner of the state of West Virginia.

(e) "Insurance fraud" includes, but is not limited to, instances where any person who, with the intent to injure, defraud or deceive any person, insurer or agency:

(i) Presents or causes to be presented to any insurer or insurance representative any written or oral statement as part of or in support of an application for insurance or a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete or misleading information concerning any fact or thing material to the application, claim or benefit;

(ii) Submits or causes to be submitted to any authorized agency any written or oral statement as part of or in support of any application, audit, claim, report, investigation, valuation, statement, appraisal, estimation of loss, publication, certificate, actuarial report or study, filing,
financial statement, tax return, rate request, petition or any other such document knowing that such statement contains any false, incomplete or misleading information concerning any fact or thing material thereto;

(iii) Solicits, offers or receives any remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys from any person or insurer which would not otherwise be payable under an applicable insurance policy; and

(iv) Assists, abets, solicits or conspires with another to commit insurance fraud.

(f) "Person" means any individual, partnership, firm, association, corporation, company, insurer, organization, society, reciprocal, business trust or any other legal entity. "Person" also includes hospital service corporations, medical service corporations and dental service corporations as defined in article twenty-four of this chapter, health care corporations as defined in article twenty-five of this chapter, or a health maintenance organization organized pursuant to article twenty-five-a of this chapter.

§33-41-3. Privileges and immunity.

(a) Any person who makes a report or furnishes information, written or oral, concerning suspected, anticipated or completed insurance fraud to an insurer or authorized agency shall be entitled to those privileges and immunities heretofore existing under the common or statutory law of this state, as well as the immunity established herein.

(b) In the absence of fraud, malice or bad faith, no person or agent, employee or designee of such person shall be subject to civil liability of any nature arising out of such person's providing any information related to suspected, anticipated or completed insurance fraud to any insurer or authorized agency.

(c) Nothing herein shall be construed to limit, abrogate or modify existing statutes or case law applicable to the duties or liabilities of insurers regarding bad faith or unfair trade practices.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the

day of , 1997.

Governor