

HB 2961

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



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COMMITTEE SUBSTITUTE
FOR
House Bill No. 2961

(By Delegates Amores, Ashley, Azinger, Beane and Martin)



Passed March 13, 1999

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK
SPECIAL SERVICES

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COMMITTEE SUBSTITUTE

FOR

H. B. 2961

(BY DELEGATES AMORES, ASHLEY, AZINGER, BEANE AND MARTIN)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; and to amend article fourteen of said chapter by adding thereto a new section, designated section twelve-b, all relating to establishing a special volunteer medical license for retired or retiring physicians treating indigents and the needy without compensation; providing for issuance without payment of fees; specifying requirements of license; providing for civil immunity for voluntary medical services rendered to indigents; limitations thereon; and required insurance coverage.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

1 (a) There is hereby established a special volunteer medical
2 license for physicians retired or retiring from the active practice
3 of medicine who wish to donate their expertise for the medical
4 care and treatment of indigent and needy patients in the clinic
5 setting of clinics organized, in whole or in part, for the delivery
6 of health care services without charge. The special volunteer
7 medical license shall be issued by the West Virginia board of
8 medicine to physicians licensed or otherwise eligible for
9 licensure under this article and the rules promulgated hereunder
10 without the payment of any application fee, license fee or
11 renewal fee, shall be issued for a fiscal year or part thereof, and
12 shall be renewable annually. The board shall develop applica-
13 tion forms for the special license provided for in this subsection
14 which shall contain the physician's acknowledgment that: (1)
15 The physician's practice under the special volunteer medical
16 license will be exclusively and totally devoted to providing
17 medical care to needy and indigent persons in West Virginia;
18 (2) the physician will not receive any payment or compensation,
19 either direct or indirect, or have the expectation of any payment
20 or compensation, for any medical services rendered under the
21 special volunteer medical license; (3) the physician will supply
22 any supporting documentation that the board may reasonably
23 require; and (4) the physician agrees to continue to participate
24 in continuing medical education as required of physicians in
25 active practice.

26 (b) Any physician who renders any medical service to
27 indigent and needy patients of a clinic organized, in whole or in
28 part, for the delivery of health care services without charge
29 under a special volunteer medical license authorized under
30 subsection (a) of this section without payment or compensation
31 or the expectation or promise of payment or compensation is
32 immune from liability for any civil action arising out of any act
33 or omission resulting from the rendering of the medical service
34 at the clinic unless the act or omission was the result of the
35 physician's gross negligence or willful misconduct. In order for

36 the immunity under this subsection to apply, there must be a
37 written agreement between the physician and the clinic pursuant
38 to which the physician will provide voluntary noncompensated
39 medical services under the control of the clinic to patients of the
40 clinic before the rendering of any services by the physician at
41 the clinic: *Provided*, That any clinic entering into such written
42 agreement shall be required to maintain liability coverage of not
43 less than one million dollars per occurrence.

44 (c) Notwithstanding the provisions of subsection (a) of this
45 section, a clinic organized, in whole or in part, for the delivery
46 of health care services without charge shall not be relieved from
47 imputed liability for the negligent acts of a physician rendering
48 voluntary medical services at or for the clinic under a special
49 volunteer medical license authorized under subsection (a) of
50 this section.

51 (d) For purposes of this section, "otherwise eligible for
52 licensure" means the satisfaction of all the requirements for
53 licensure as listed in section ten of this article and in the
54 legislative rules promulgated hereunder, except the fee require-
55 ments of subsections (b) and (d) of said section and of the
56 legislative rule promulgated by the board relating to fees.

57 (e) Nothing in this section may be construed as requiring
58 the board to issue a special volunteer medical license to any
59 physician whose medical license is or has been subject to any
60 disciplinary action or to any physician who has surrendered a
61 medical license or caused such license to lapse, expire and
62 become invalid in lieu of having a complaint initiated or other
63 action taken against his or her medical license, or who has
64 elected to place a medical license in inactive status in lieu of
65 having a complaint initiated or other action taken against his or
66 her medical license, or who have been denied a medical license.

67 (f) Any policy or contract of liability insurance providing
68 coverage for liability sold, issued or delivered in this state to
69 any physician covered under the provisions of this article shall
70 be read so as to contain a provision or endorsement whereby the
71 company issuing such policy waives or agrees not to assert as
72 a defense on behalf of the policyholder or any beneficiary

73 thereof, to any claim covered by the terms of such policy within
74 the policy limits, the immunity from liability of the insured by
75 reason of the care and treatment of needy and indigent patients
76 by a physician who holds a special volunteer medical license.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

**§30-14-12b. Special volunteer medical license; civil immunity for
voluntary services rendered to indigents.**

1 (a) There is hereby established a special volunteer medical
2 license for physicians retired or retiring from the active practice
3 of osteopathy who wish to donate their expertise for the medical
4 care and treatment of indigent and needy patients in the clinic
5 patients of clinics organized, in whole or in part, for the
6 delivery of health care services without charge. The special
7 volunteer medical license shall be issued by the West Virginia
8 board of osteopathy to physicians licensed or otherwise eligible
9 for licensure under this article and the rules promulgated
10 hereunder without the payment of any application fee, license
11 fee or renewal fee, shall be issued for a fiscal year or part
12 thereof, and shall be renewable annually. The board shall
13 develop application forms for the special license provided for
14 in this subsection which shall contain the physician's acknowl-
15 edgment that: (1) The physician's practice under the special
16 volunteer medical license will be exclusively and totally
17 devoted to providing medical care to needy and indigent
18 persons in West Virginia; (2) the physician will not receive any
19 payment or compensation, either direct or indirect, or have the
20 expectation of any payment or compensation, for any medical
21 services rendered under the special volunteer medical license;
22 (3) the physician will supply any supporting documentation that
23 the board may reasonably require; and (4) that the physician
24 agrees to continue to participate in continuing medical educa-
25 tion as required of physicians in active practice.

26 (b) Any physician who renders any medical service to
27 indigent and needy patients of clinics organized, in whole or in
28 part, for the delivery of health care services without charge
29 under a special volunteer medical license authorized under
30 subsection (a) of this section without payment or compensation

31 or the expectation or promise of payment or compensation is
32 immune from liability for any civil action arising out of any act
33 or omission resulting from the rendering of the medical service
34 at the clinic unless the act or omission was the result of the
35 physician's gross negligence or willful misconduct. In order for
36 the immunity under this subsection to apply, there must be a
37 written agreement between the physician and the clinic pursuant
38 to which the physician will provide voluntary noncompensated
39 medical services under the control of the clinic to patients of the
40 clinic before the rendering of any services by the physician at
41 the clinic: *Provided*, That any clinic entering into such written
42 agreement shall be required to maintain liability coverage of not
43 less than one million dollars per occurrence.

44 (c) Notwithstanding the provisions of subsection (a) of this
45 section, a clinic organized, in whole or in part, for the delivery
46 of health care services without charge shall not be relieved from
47 imputed liability for the negligent acts of a physician rendering
48 voluntary medical services at or for the clinic under a special
49 volunteer medical license authorized under subsection (a) of
50 this section.

51 (d) For purposes of this section, "otherwise eligible for
52 licensure" means the satisfaction of all the requirements for
53 licensure as listed in section ten of this article and in the
54 legislative rules promulgated hereunder, except the fee require-
55 ments of subsections (b) and (d) of said section and of the
56 legislative rule promulgated by the board relating to fees.

57 (e) Nothing in this section may be construed as requiring
58 the board to issue a special volunteer medical license to any
59 physician whose medical license is or has been subject to any
60 disciplinary action or to any physician who has surrendered a
61 medical license or caused such license to lapse, expire and
62 become invalid in lieu of having a complaint initiated or other
63 action taken against his or her medical license, or who has
64 elected to place a medical license in inactive status in lieu of
65 having a complaint initiated or other action taken against his or
66 her medical license, or who have been denied a medical license.

67 (f) Any policy or contract of liability insurance providing
68 coverage for liability sold, issued or delivered in this state to

69 any physician covered under the provisions of this article shall
70 be read so as to contain a provision or endorsement the com-
71 pany issuing such policy waives or agrees not to assert as a
72 defense on behalf of the policyholder or any beneficiary
73 thereof, to any claim covered by the terms of such policy within
74 the policy limits, the immunity from liability of the insured by
75 reason of the care and treatment of needy and indigent patients
76 by a physician who holds a special volunteer medical license.

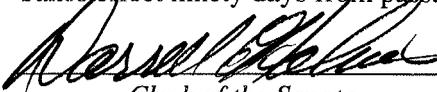
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

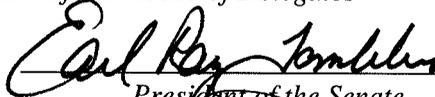

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

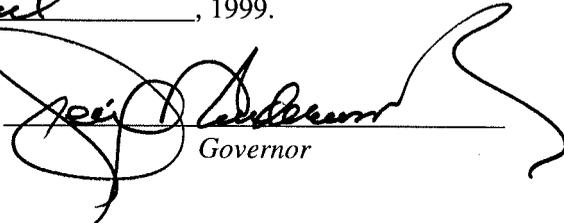

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 6th
day of April, 1999.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/4/99

Time 2:50 pm