WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4377

(By Mr. Speaker, Mr. Kiss, and Delegates Staton, Varner, Mahan, Doyle, Browning and Hrutkay)

Passed March 13, 2004
In Effect from Passage
AN ACT to amend and reenact §30-3-12 of the code of West Virginia, 1931, as amended; to amend and reenact §30-14-10 of said code; and to amend and reenact §33-20F-4, §33-20F-5 and §33-20F-7 of said code, all relating to physicians generally; permitting a physician who allows his or her medical license to expire upon retirement to retain the license certificate issued by the board of medicine; requiring the board of osteopathy to propose legislative rules; clarifying and correcting the premium taxes that the physicians’ mutual insurance company will be subject to; physicians exempt from the special assessment; providing for suspension and a civil penalty for failure to pay the special assessment; and sunset provision.

Be it enacted by the Legislature of West Virginia:
That §30-3-12 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §30-14-10 of said code be amended and reenacted; and that §33-20F-4, §33-20F-5 and §33-20F-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.

(a) A license to practice medicine and surgery or podiatry in this state is valid for a term of two years and shall be renewed upon a receipt of a reasonable fee, as set by the board, submission of an application on forms provided by the board and, beginning with the biennial renewal application forms completed by licensees and submitted to the board in one thousand nine hundred ninety-three, a certification in accordance with rules and regulations promulgated by the board in accordance with chapter twenty-nine-a of this code of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during the preceding two-year period. Continuing medical education satisfactory to the board is continuing medical education designated as Category I by the American Medical Association or the Academy of Family Physicians and continuing podiatric education satisfactory to the board is continuing podiatric education approved by the council on podiatric education.

In addition, the Legislature hereby finds and declares that it is in the public interest to encourage alternate categories of continuing education satisfactory to the board for physicians and podiatrists. In order to provide adequate notice of the same to physicians and podiatrists, no later than the first day of June,
one thousand nine hundred ninety-one, the board shall file rules
under the provisions of section fifteen, article three, chapter
twenty-nine-a of this code, delineating any alternate categories
of continuing medical or podiatric education which may be
considered satisfactory to the board and any procedures for
board approval of such continuing education.

Notwithstanding any provision of this chapter to the
contrary, failure to timely submit to the board a certification in
accordance with rules and regulations promulgated by the board
in accordance with chapter twenty-nine-a of this code of
successful completion of a minimum of fifty hours of continu-
ing medical or podiatric education satisfactory to the board, as
appropriate to the particular license, shall, beginning the first
day of July, one thousand nine hundred ninety-three, result in
the automatic suspension of any license to practice medicine
and surgery or podiatry until such time as the certification in
accordance with chapter twenty-nine-a of this code, with all
supporting written documentation, is submitted to and approved
by the board.

Any individual who accepts the privilege of practicing
medicine and surgery or podiatry in this state is required to
provide supporting written documentation of the continuing
education represented as received within thirty days of receipt
of a written request to do so by the board. If a licensee fails or
refuses to provide supporting written documentation of the
continuing education represented as received as required in this
section, such failure or refusal to provide supporting written
documentation is prima facie evidence of renewing a license to
practice medicine and surgery or podiatry by fraudulent
misrepresentation.

(b) The board may renew, on an inactive basis, the license
of a physician or podiatrist who is currently licensed to practice
medicine and surgery or podiatry in, but is not actually practic-
ing, medicine and surgery or podiatry in this state. A physician
or podiatrist holding an inactive license shall not practice
medicine and surgery or podiatry in this state. His or her
inactive license may be converted by the board to an active one
upon a written request to the board that accounts for his or her
period of inactivity to the satisfaction of the board: Provided,
That beginning on the first day of July, one thousand nine
hundred ninety-three, such licensee submits written documenta-
tion of participation in and successful completion of a minimum
of fifty hours of continuing medical or podiatric education
satisfactory to the board, as appropriate to the particular license,
during each preceding two-year period. An inactive license may
be obtained upon receipt of a reasonable fee, as set by the
board, and submission of an application on forms provided by
the board on a biennial basis.

(c) The board shall not require any physician or podiatrist
who is retired or retiring from the active practice of medicine
and surgery or the practice of podiatry and who is voluntarily
surrendering their license to return to the board the license
certificate issued to them by the board.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-10. Annual renewal of license; fee; refresher training a
prerequisite; effect of failure to renew; rein-
statement.

(a) All holders of certificates of license to practice as
osteopathic physicians and surgeons in this state shall renew
them biennially on or before the first day of July, by the
payment of a reasonable renewal fee, the amount of such
reasonable fee to be set by the board rules to the secretary of the
board. The secretary of the board shall notify each certificate
holder by mail of the necessity of renewing his or her certificate
at least thirty days prior to the first day of July of each year.
(b) As a prerequisite to renewal of a certificate of license issued by the board, each holder of such a certificate shall furnish biennially to the secretary of the board satisfactory evidence of having completed thirty-two hours of educational refresher course training, of which the total amount of hours must be AOA approved, and fifty percent of the required thirty-two hours shall be category (1).

(c) The failure to renew a certificate of license shall operate as an automatic suspension of the rights and privileges granted by its issuance. The board may propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, providing that an osteopathic physician may renew a certificate of license on an inactive basis.

(d) A certificate of license suspended by a failure to make a biennial renewal thereof may be reinstated by the board upon compliance of the certificate holder with the following requirements:

(1) presentation to the board of satisfactory evidence of educational refresher training of quantity and standard approved by the board for the previous two years;

(2) payment of all fees for the previous two years that would have been paid had the certificate holder maintained his or her certificate in good standing; and

(3) payment to the board of a reasonable reinstatement fee, the amount of such reasonable fee to be set by the board rules.

CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIAN’ MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations.
(a) Subject to the provisions of this article, a physicians’ mutual insurance company may be created as a domestic, private, nonstock, nonprofit corporation. As an incentive for its creation, the company may be eligible for funds from the Legislature in accordance with the provisions of section seven of this article. The company must remain for the duration of its existence a domestic mutual insurance company owned by its policyholders and may not be converted into a stock corporation, a for-profit corporation or any other entity not owned by its policyholders. The company may not declare any dividend to its policyholders; sell, assign or transfer substantial assets of the company; or write coverage outside this state, except for counties adjoining this state, until after any and all debts owed by the company to the state have been fully paid.

(b) For the duration of its existence, the company is not and may not be considered a department, unit, agency, or instrumentality of the state for any purpose. All debts, claims, obligations, and liabilities of the company, whenever incurred, shall be the debts, claims, obligations, and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer, or employee of the state.

c) The moneys of the company are not and may not be considered part of the general revenue fund of the state. The debts, claims, obligations, and liabilities of the company are not and may not be considered a debt of the state or a pledge of the credit of the state.

(d) The company is not subject to provisions of article nine-a, chapter six of this code or the provisions of article one, chapter twenty-nine-b of this code.

(e)(1) All premiums collected by the company are subject to the premium taxes, additional premium taxes, additional fire and casualty insurance premium taxes and surcharges contained
in sections fourteen, fourteen-a, fourteen-d and thirty-three, article three of this chapter: Provided, That while the loan to the company of moneys from the West Virginia tobacco settlement medical trust fund pursuant to section nine of this article remains outstanding, the commissioner may waive the company’s premium taxes, additional premium taxes and additional fire and casualty insurance premium taxes if payment would render the company insolvent or otherwise financially impaired.

(2) On and after the first day of July, two thousand and three, any premium taxes and additional premium taxes paid by the company and by any insurer on its medical malpractice line pursuant to sections fourteen and fourteen-a, article three of this chapter, shall be temporarily applied toward replenishing the moneys appropriated from the West Virginia tobacco settlement medical trust fund pursuant to subsection (c), section two, article eleven-a, chapter four of this code pending repayment of the loan of such moneys by the company.

(3) The state treasurer shall notify the commissioner when the moneys appropriated from the West Virginia tobacco settlement medical trust have been fully replenished, at which time the commissioner shall resume depositing premium taxes and additional premium taxes diverted pursuant to subdivision (2) of this subsection in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

(4) Payments received by the treasurer from the company in repayment of any outstanding loan made pursuant to section nine of this article shall be deposited in the West Virginia tobacco settlement medical trust fund and dedicated to replenishing the moneys appropriated therefrom under subsection (c), section two, article eleven-a, chapter four of this code. Once the moneys appropriated from the West Virginia tobacco settlement medical trust fund have been fully replenished, the treasurer shall deposit any payments from the company in repayment of
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any outstanding loan made pursuant to section nine of this article in said fund and transfer a like amount from said fund to the commissioner for disbursement in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

§33-20F-5. Governance and organization.

(a)(1) The board of risk and insurance management shall implement the initial formation and organization of the company as provided by this article.

(2) From the first day of July, two thousand three, until the thirtieth day of June, two thousand four, the company shall be governed by a provisional board of directors consisting of the members of the board of risk and insurance management, the dean of the West Virginia University School of Medicine or a physician representative designated by him or her, and five physician directors, elected by the policyholders whose policies are to be transferred to the company pursuant to section nine of this article.

(3) Only physicians who are licensed to practice medicine in this state pursuant to article three or article fourteen, chapter thirty of this code and who have purchased medical professional liability coverage from the board of risk and insurance management are eligible to serve as physician directors on the provisional board of directors. One of the physician directors shall be selected from a list of three physicians nominated by the West Virginia Medical Association. The board of risk and insurance management shall develop procedures for the nomination of the remaining physician directors and for the conduct of the election, to be held no later than the first day of June, two thousand three, of all of the physician directors, including, but not limited to, giving notice of the election to the
policies. These procedures shall be exempt from the provisions of article three, chapter twenty-nine-a of this code.

(b) From the first day of July, two thousand four, the company shall be governed by a board of directors consisting of eleven directors, as follows:

(1) Five directors who are physicians licensed to practice medicine in this state by the board of medicine or the board of osteopathy, including at least one general practitioner and one specialist. Provided, That only physicians who have purchased medical professional liability coverage from the board of risk and insurance management are eligible to serve as physician representatives on the company’s first board of directors;

(2) Three directors who have substantial experience as an officer or employee of a company in the insurance industry;

(3) Two directors with general knowledge and experience in business management who are officers and employees of the company and are responsible for the daily management of the company; and

(4) One director who is a dean of a West Virginia school of medicine or osteopathy or his or her designated physician representative. This director’s position shall rotate annually among the dean of the West Virginia University School of Medicine, the dean of the Marshall University Joan C. Edwards School of Medicine and the dean of the West Virginia School of Osteopathic Medicine. This director shall serve until such time as the moneys loaned to the company from the West Virginia tobacco settlement medical trust fund have been replenished as provided in subsection (e), section four of this article. After the moneys have been replenished to the West Virginia tobacco settlement medical trust fund, this director shall be a physician licensed to practice medicine in this state by the board of medicine or the board of osteopathy.
(c) In addition to the eleven directors required by subsection (b) of this section, the bylaws of the company may provide for the addition of at least two directors who represent an entity or institution which lends or otherwise provides funds to the company.

(d) The directors and officers of the company are to be chosen in accordance with the articles of incorporation and bylaws of the company. The initial board of directors selected in accordance with the provisions of subdivision (3), subsection (a) of this section shall serve for the following terms: (1) Three for four-year terms; (2) three for three-year terms; (3) three for two-year terms; and (4) two for one-year terms. Thereafter, the directors shall serve staggered terms of four years. If an additional director is added to the board as provided in subsection (c) of this section, his or her initial term shall be for four years. No director chosen pursuant to subsection (b) of this section may serve more than two consecutive terms.

(e) The incorporators are to prepare and file articles of incorporation and bylaws in accordance with the provisions of this article and the provisions of chapters thirty-one, and thirty-three of this code.

§33-20F-7. Initial capital and surplus; special assessment; failure to pay assessment; disposition of civil penalty collected.

(a) There is hereby created in the state treasury a special revenue account designated as the “Board of Risk and Insurance Management Physicians’ Mutual Insurance Company Account” solely for the purpose of receiving moneys transferred from the West Virginia Tobacco Medical Trust Fund pursuant to subsection (c), section two, article eleven-a, chapter four of this code for the company’s use as initial capital and surplus.
(b) On the first day of July, two thousand three, a special one-time assessment, in the amount of one thousand dollars, shall be imposed on every physician licensed by the board of medicine or by the board of osteopathy for the privilege of practicing medicine in this state: Provided, That the following physicians shall be exempt from the assessment:

(1) A faculty physician who meets the criteria for full-time faculty under subsection (f), section one, article eight, chapter eighteen-b of this code, who is a full-time employee of a school of medicine or osteopathic medicine in this state, and who does not maintain a private practice;

(2) A resident physician who is a graduate of a medical school or college of osteopathic medicine enrolled and who is participating in an accredited full-time program of post-graduate medical education in this state;

(3) A physician who has presented suitable proof that he or she is on active duty in armed forces of the United States and who will not be reimbursed by the armed forces for the assessment;

(4) A physician who receives more than fifty percent of his or her practice income from providing services to federally qualified health center as that term is defined in 42 U.S.C. § 1396d(1)(2);

(5) A physician who practices solely under a special volunteer medical license authorized by section ten-a, article three or section twelve-b, article fourteen, chapter thirty of this code. The assessment is to be imposed and collected by the board of medicine and the board of osteopathy on forms prescribed by each licensing board; and

(6) A physician who is licensed on an inactive basis pursuant to subsection (b), section twelve, article three, chapter
thirty of this code or section ten, article fourteen, chapter thirty
or a physician who voluntarily surrenders his license: Provided,
That a retired osteopathic physician, who submits to the board
of osteopathy an affidavit asserting that he or she receives no
monetary remuneration for any medical services provided,
executed under the penalty of perjury and if executed outside
the state of West Virginia, verified, may be considered to be
licensed on an inactive basis: Provided, however, That if a
physician elects to resume an active license to practice in the
state and the physician has never paid the assessment, then as
a condition of receiving an active status license, the physician
must pay the special one-time assessment.

(c) The entire proceeds of the special assessment collected
pursuant to subsection (b) of this section shall be dedicated to
the company. The board of medicine and the board of osteopa-
thy shall promptly pay over to the company all amounts
collected pursuant to this section to be used as policyholder
surplus for the company.

(d) Any physician who applies to purchase insurance from
the company and who has not paid the assessment pursuant to
subsection (b) of this section shall pay one thousand dollars to
the company as a condition of obtaining insurance from the
company.

(e) A physician who fails to pay the special one-time
assessment imposed on the first day of July, two thousand three,
pursuant to subsection (b) of this section, on or before thirtieth
day of June, two thousand four, or when the license is due for
renewal, whichever is earlier, and has received written notice of
the assessment and option to elect inactive status, at least thirty
days before the licensure renewal date or by thirtieth day of
May, two thousand four, is subject to a civil penalty in the
amount of two hundred fifty dollars payable to either the board
of medicine or the board of osteopathy. Furthermore, and
notwithstanding any provision of chapter thirty to the contrary, the board of medicine or the board of osteopathy shall immediately suspend the license to practice medicine or podiatry of any physician who received notice and failed to pay the special assessment by the first day of July, two thousand four. Any license to practice medicine suspended pursuant to this section shall remain suspended until both the special assessment and the civil penalty are paid in full.

(f) The entire proceeds of the civil penalty collected pursuant to subsection (e) of this section shall be dedicated to the company. The board of medicine and the board of osteopathy shall promptly pay over to the company all amounts collected pursuant to subsection (e) of this section to be used as policyholder surplus for the company.

(g) The requirements of subsection (b), (c), (d), (e) and (f) of this section shall terminate on January 1, 2008 unless continued or reestablished.
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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill was approved by the Governor on the 3rd day of March, 2004.

Governor