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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004

**SECOND
ENROLLMENT**

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4377**

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

Passed March 21, 2004

In Effect from Passage

FILED

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COMMITTEE SUBSTITUTE

FOR

H. B. 4377

(BY MR. SPEAKER, MR. KISS, AND DELEGATES STATON, VARNER,
MAHAN, DOYLE, BROWNING AND HRUTKAY)

[Amended and Again Passed March 21, 2004, as a Result of the Objections
of the Governor; 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; authorizing the board of osteopathy to propose legislative rules allowing inactive license status; clarifying and correcting the premium taxes that the physicians' mutual insurance company will be subject to; providing exemption to certain physicians from special assessment; providing for license suspension and civil penalty for failure to pay the special assessment; and creating a 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.

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

19 In addition, the Legislature hereby finds and declares that
20 it is in the public interest to encourage alternate categories of
21 continuing education satisfactory to the board for physicians

22 and podiatrists. In order to provide adequate notice of the same
23 to physicians and podiatrists, no later than the first day of June,
24 one thousand nine hundred ninety-one, the board shall file rules
25 under the provisions of section fifteen, article three, chapter
26 twenty-nine-a of this code, delineating any alternate categories
27 of continuing medical or podiatric education which may be
28 considered satisfactory to the board and any procedures for
29 board approval of such continuing education.

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

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

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

73 (c) The board shall not require any physician or podiatrist
74 who is retired or retiring from the active practice of medicine
75 and surgery or the practice of podiatry and who is voluntarily
76 surrendering their license to return to the board the license
77 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; reinstatement.

1 (a) All holders of certificates of license to practice as
2 osteopathic physicians and surgeons in this state shall renew
3 them biennially on or before the first day of July, by the
4 payment of a reasonable renewal fee, the amount of such
5 reasonable fee to be set by the board rules to the secretary of the

6 board. The secretary of the board shall notify each certificate
7 holder by mail of the necessity of renewing his or her certificate
8 at least thirty days prior to the first day of July of each year.

9 (b) As a prerequisite to renewal of a certificate of license
10 issued by the board, each holder of such a certificate shall
11 furnish biennially to the secretary of the board satisfactory
12 evidence of having completed thirty-two hours of educational
13 refresher course training, of which the total amount of hours
14 must be AOA approved, and fifty percent of the required thirty-
15 two hours shall be category (1).

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

23 (d) A certificate of license suspended by a failure to make
24 a biennial renewal thereof may be reinstated by the board upon
25 compliance of the certificate holder with the following require-
26 ments:

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

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

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

CHAPTER 33. INSURANCE.**ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.****§33-20F-4. Authorization for creation of company; requirements and limitations.**

1 (a) Subject to the provisions of this article, a physicians'
2 mutual insurance company may be created as a domestic,
3 private, nonstock, nonprofit corporation. As an incentive for its
4 creation, the company may be eligible for funds from the
5 Legislature in accordance with the provisions of section seven
6 of this article. The company must remain for the duration of its
7 existence a domestic mutual insurance company owned by its
8 policyholders and may not be converted into a stock corpora-
9 tion, a for-profit corporation or any other entity not owned by
10 its policyholders. The company may not declare any dividend
11 to its policyholders; sell, assign or transfer substantial assets of
12 the company; or write coverage outside this state, except for
13 counties adjoining this state, until after any and all debts owed
14 by the company to the state have been fully paid.

15 (b) For the duration of its existence, the company is not and
16 may not be considered a department, unit, agency, or instru-
17 mentality of the state for any purpose. All debts, claims,
18 obligations, and liabilities of the company, whenever incurred,
19 shall be the debts, claims, obligations, and liabilities of the
20 company only and not of the state or of any department, unit,
21 agency, instrumentality, officer, or employee of the state.

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

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

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

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

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

57 (4) Payments received by the treasurer from the company
58 in repayment of any outstanding loan made pursuant to section

59 nine of this article shall be deposited in the West Virginia
60 tobacco settlement medical trust fund and dedicated to replen-
61 ishing the moneys appropriated therefrom under subsection (c),
62 section two, article eleven-a, chapter four of this code. Once the
63 moneys appropriated from the West Virginia tobacco settlement
64 medical trust fund have been fully replenished, the treasurer
65 shall deposit any payments from the company in repayment of
66 any outstanding loan made pursuant to section nine of this
67 article in said fund and transfer a like amount from said fund to
68 the commissioner for disbursement in accordance with the
69 provisions of sections fourteen and fourteen-a, article three of
70 this chapter.

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

1 (a)(1) The board of risk and insurance management shall
2 implement the initial formation and organization of the com-
3 pany as provided by this article.

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

13 (3) Only physicians who are licensed to practice medicine
14 in this state pursuant to article three or article fourteen, chapter
15 thirty of this code and who have purchased medical profes-
16 sional liability coverage from the board of risk and insurance
17 management are eligible to serve as physician directors on the
18 provisional board of directors. One of the physician directors
19 shall be selected from a list of three physicians nominated by

20 the West Virginia Medical Association. The board of risk and
21 insurance management shall develop procedures for the
22 nomination of the remaining physician directors and for the
23 conduct of the election, to be held no later than the first day of
24 June, two thousand three, of all of the physician directors,
25 including, but not limited to, giving notice of the election to the
26 policyholders. These procedures shall be exempt from the
27 provisions of article three, chapter twenty-nine-a of this code.

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

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

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

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

44 (4) One director who is a dean of a West Virginia school of
45 medicine or osteopathy or his or her designated physician
46 representative. This director's position shall rotate annually
47 among the dean of the West Virginia University School of
48 Medicine, the dean of the Marshall University Joan C. Edwards
49 School of Medicine and the dean of the West Virginia School
50 of Osteopathic Medicine. This director shall serve until such

51 time as the moneys loaned to the company from the West
52 Virginia tobacco settlement medical trust fund have been
53 replenished as provided in subsection (e), section four of this
54 article. After the moneys have been replenished to the West
55 Virginia tobacco settlement medical trust fund, this director
56 shall be a physician licensed to practice medicine in this state
57 by the board of medicine or the board of osteopathy.

58 (c) In addition to the eleven directors required by subsec-
59 tion (b) of this section, the bylaws of the company may provide
60 for the addition of at least two directors who represent an entity
61 or institution which lends or otherwise provides funds to the
62 company.

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

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

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

1 (a) There is hereby created in the state treasury a special
2 revenue account designated as the “Board of Risk and Insurance
3 Management Physicians’ Mutual Insurance Company Account”
4 solely for the purpose of receiving moneys transferred from the
5 West Virginia Tobacco Medical Trust Fund pursuant to sub-
6 section (c), section two, article eleven-a, chapter four of this
7 code for the company’s use as initial capital and surplus.

8 (b) On the first day of July, two thousand three, a special
9 one-time assessment, in the amount of one thousand dollars,
10 shall be imposed on every physician licensed by the board of
11 medicine or by the board of osteopathy for the privilege of
12 practicing medicine in this state: Provided, That the following
13 physicians shall be exempt from the assessment:

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

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

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

27 (4) A physician who receives more than fifty percent of his
28 or her practice income from providing services to federally
29 qualified health center as that term is defined in 42 U.S.C. §
30 1396d(1)(2);

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

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

51 (7) A physician who practices less than forty hours a year
52 providing medical genetic services to patients within this state.

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

59 (d) Any physician who applies to purchase insurance from
60 the company and who has not paid the assessment pursuant to
61 subsection (b) of this section shall pay one thousand dollars to

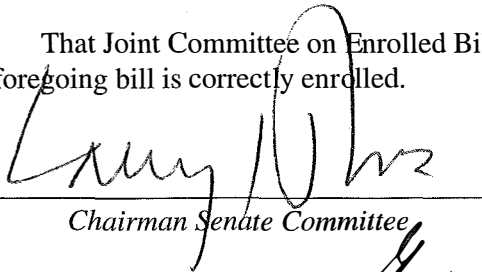
62 the company as a condition of obtaining insurance from the
63 company.

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

82 (f) The entire proceeds of the civil penalty collected
83 pursuant to subsection (e) of this section shall be dedicated to
84 the company. The board of medicine and the board of osteopa-
85 thy shall promptly pay over to the company all amounts
86 collected pursuant to subsection (e) of this section to be used as
87 policyholder surplus for the company.

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

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

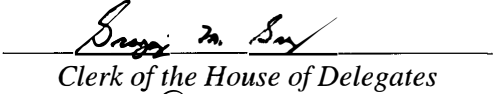

Chairman Senate Committee

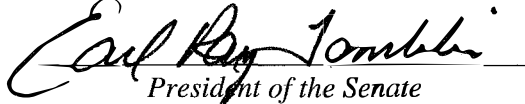

Chairman House Committee

Originating in the House.

In effect from passage.

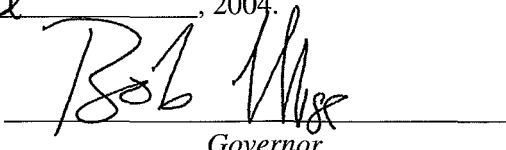

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 7th
day of April, 2004.


Governor

PRESENTED TO THE
GOVERNOR

Date 4/2/04

Time 2:15 P