

HB 4015 - S

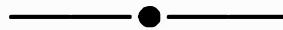
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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006

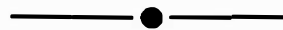


ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4015

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed March 11, 2006

In Effect Ninety Days from Passage

FILED

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E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4015

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended, to amend and reenact §11B-2-20 of said code; and to amend and reenact §33-20F-4 of said code; all relating generally to reserve funding; creating the Revenue Shortfall Reserve Fund – Part B; providing for the transfer of all monies in the West Virginia Tobacco Settlement Medical Trust Fund including any interest and earnings thereon to the Revenue Shortfall Reserve Fund - Part B; closing the West Virginia Tobacco Settlement Medical Trust Fund; providing funding for the Revenue Shortfall Reserve Fund; providing legislative authority to appropriate moneys from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund - Part B; providing that repayments from the loan made to the physicians' mutual insurance company shall be paid into the Revenue Shortfall Reserve Fund – Part B; providing for the

investment of moneys in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11B-2-20 of said code be amended and reenacted; and that §33-20F-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund until the first day of June, two thousand five, then to Workers' Compensation Debt Reduction Fund; deposit of strategic compensation payments; transfer of trust fund moneys.

1 (a) The Legislature finds and declares that certain dedicated
2 revenues should be preserved in trust for the purpose of
3 stabilizing the state's health-related programs and delivery
4 systems. It further finds and declares that these dedicated
5 revenues should be preserved in trust for the purpose of
6 educating the public about the health risks associated with
7 tobacco usage and establishing a program designed to reduce
8 and stop the use of tobacco by the citizens of this state and in
9 particular by teenagers.

10 (b) There is hereby created a special account in the state
11 treasury, designated the "West Virginia Tobacco Settlement
12 Medical Trust Fund", which shall be an interest-bearing

13 account and may be invested in the manner permitted by section
14 nine, article six, chapter twelve of this code, with the interest
15 income a proper credit to the fund. Unless contrary to federal
16 law, fifty percent of all revenues received pursuant to the
17 master settlement agreement shall be deposited in this fund.
18 Funds paid into the account may also be derived from the
19 following sources:

20 (1) All interest or return on investment accruing to the fund;

21 (2) Any gifts, grants, bequests, transfers or donations which
22 may be received from any governmental entity or unit or any
23 person, firm, foundation or corporation;

24 (3) Any appropriations by the Legislature which may be
25 made for this purpose; and

26 (4) Any funds or accrued interest remaining in the Board of
27 Risk and Insurance Management physicians' mutual insurance
28 company account created pursuant to section seven, article
29 twenty-f, chapter thirty-three of this code on or after the first
30 day of July, two thousand four.

31 (c)(1) The moneys from the principal in the trust fund may
32 not be expended for any purpose, except that on the first day of
33 April, two thousand three, the treasurer shall transfer to the
34 Board of Risk and Insurance Management physicians' mutual
35 insurance company account created by section seven, article
36 twenty-f, chapter thirty-three of this code, twenty-four million
37 dollars from the West Virginia Tobacco Settlement Medical
38 Trust Fund for use as the initial capital and surplus of the
39 physicians' mutual insurance company created pursuant to said
40 article. The remaining moneys in the trust fund resulting from
41 interest earned on the moneys in the fund and the return on
42 investments of the moneys in the fund shall be available only
43 upon appropriation by the Legislature as part of the state budget

44 and expended in accordance with the provisions of section three
45 of this article.

46 (2) Notwithstanding any other provision of this code to the
47 contrary, on the effective date of the amendment and
48 reenactment of this section during the regular session of the
49 Legislature in two thousand six, all moneys in the trust fund and
50 any interest or other return earned thereon shall be transferred
51 to the Revenue Shortfall Reserve Fund – Part B created in
52 section twenty, article two, chapter eleven-b of this code and
53 the trust fund shall be closed. No provisions of the amendments
54 made to this section during the regular session of the Legisla-
55 ture in two thousand six may be construed to change the
56 requirements of this section for the deposit of revenues received
57 pursuant to the tobacco master settlement agreement into the
58 workers' compensation debt reduction fund.

59 (d) Notwithstanding the preceding subsections to the
60 contrary, the first thirty million dollars of all revenues received
61 after the thirtieth day of June, two thousand five, pursuant to
62 section IX(c)(1) of the tobacco master settlement agreement
63 shall in the fiscal year beginning the first day of July, two
64 thousand five, and each fiscal year thereafter, be deposited in
65 the workers' compensation debt reduction fund established in
66 the state treasury in section five, article two-d, chapter twenty-
67 three of this code. Receipts in excess of thirty million dollars
68 shall be deposited into the Tobacco Settlement Fund provided
69 in section three of this article.

70 (e) Notwithstanding anything in this code to the contrary,
71 strategic compensation payments received pursuant to section
72 IX(c)(2) of the tobacco master settlement agreement, beginning
73 in two thousand eight, shall be deposited in their entirety in the
74 workers' compensation debt reduction fund.

§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund.

1 (a) There is hereby created in the state treasury a special
2 revenue account, designated the "Tobacco Settlement Fund",
3 which shall be an interest bearing account and may be invested
4 in the manner permitted by the provisions of article six, chapter
5 twelve of this code, with the interest income a proper credit to
6 the fund. Unless contrary to federal law, fifty percent of all
7 revenues received pursuant to the master settlement agreement
8 shall be deposited in this fund. These funds shall be available
9 only upon appropriation by the Legislature as part of the state
10 budget: *Provided*, That for the fiscal year two thousand, the first
11 five million dollars received into the fund shall be transferred
12 to the public employees insurance reserve fund created in
13 article two, chapter five-a of this code.

14 (b) Appropriations from the Tobacco Settlement Fund are
15 limited to expenditures for the following purposes:

16 (1) Reserve funds for continued support of the programs
17 offered by the Public Employees Insurance Agency established
18 in article sixteen, chapter five of this code;

19 (2) Funding for expansion of the federal-state medicaid
20 program as authorized by the Legislature or mandated by the
21 federal government;

22 (3) Funding for public health programs, services and
23 agencies; and

24 (4) Funding for any state owned or operated health facili-
25 ties.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

**§11B-2-20. Reduction of appropriations; powers of Governor;
Revenue Shortfall Reserve Fund and permissible
expenditures therefrom.**

1 (a) Notwithstanding any provision of this section, the
2 Governor may reduce appropriations according to any of the
3 methods set forth in sections twenty-one and twenty-two of this
4 article. The Governor may, in lieu of imposing a reduction in
5 appropriations, request an appropriation by the Legislature from
6 the Revenue Shortfall Reserve Fund established in this section.

7 (b) A Revenue Shortfall Reserve Fund is hereby continued
8 within the State Treasury. The Revenue Shortfall Reserve Fund
9 shall be funded as set forth in this subsection from surplus
10 revenues, if any, in the State Fund, General Revenue, as the
11 surplus revenues may accrue from time to time. Within sixty
12 days of the end of each fiscal year, the secretary shall cause to
13 be deposited into the Revenue Shortfall Reserve Fund the first
14 fifty percent of all surplus revenues, if any, determined to have
15 accrued during the fiscal year just ended. The Revenue Shortfall
16 Reserve Fund shall be funded continuously and on a revolving
17 basis in accordance with this subsection up to an aggregate
18 amount not to exceed ten percent of the total appropriations
19 from the State Fund, General Revenue, for the fiscal year just
20 ended. If at the end of any fiscal year the Revenue Shortfall
21 Reserve Fund is funded at an amount equal to or exceeding ten
22 percent of the State's General Revenue Fund budget for the
23 fiscal year just ended, then there shall be no further obligation
24 of the secretary under the provisions of this section to apply any
25 surplus revenues as set forth in this subsection until that time
26 the Revenue Shortfall Reserve Fund balance is less than ten
27 percent of the total appropriations from the state fund, general
28 revenue.

29 (c) Not earlier than the first day of November of each
30 calendar year, if the state's fiscal circumstances are such as to

31 otherwise trigger the authority of the Governor to reduce
32 appropriations under this section or section twenty-one or
33 section twenty-two of this article, then in that event the Gover-
34 nor may notify the presiding officers of both houses of the
35 Legislature in writing of his or her intention to convene the
36 Legislature pursuant to section nineteen, article VI of the
37 Constitution of West Virginia for the purpose of requesting the
38 introduction of a supplementary appropriation bill or to request
39 a supplementary appropriation bill at the next preceding regular
40 session of the Legislature to draw money from the surplus
41 Revenue Shortfall Reserve Fund to meet any anticipated
42 revenue shortfall. If the Legislature fails to enact a supplemen-
43 tary appropriation from the Revenue Shortfall Reserve Fund
44 during any special legislative session called for the purposes set
45 forth in this section or during the next preceding regular session
46 of the Legislature, then the Governor may proceed with a
47 reduction of appropriations pursuant to sections twenty-one and
48 twenty-two of this article. Should any amount drawn from the
49 Revenue Shortfall Reserve Fund pursuant to an appropriation
50 made by the Legislature prove insufficient to address any
51 anticipated shortfall, then the Governor may also proceed with
52 a reduction of appropriations pursuant to sections twenty-one
53 and twenty-two of this article.

54 (d) Upon the creation of the fund, the Legislature is
55 authorized and may make an appropriation from the Revenue
56 Shortfall Reserve Fund for revenue shortfalls, for emergency
57 revenue needs caused by acts of God or natural disasters or for
58 other fiscal needs as determined solely by the Legislature.

59 (e) Prior to the thirty-first day of October, in any fiscal year
60 in which revenues are inadequate to make timely payments of
61 the state's obligations, the Governor may by executive order,
62 after first notifying the presiding officers of both houses of the
63 Legislature in writing, borrow funds from the Revenue Shortfall
64 Reserve Fund. The amount of funds borrowed under this

65 subsection shall not exceed one and one-half percent of the
66 general revenue estimate for the fiscal year in which the funds
67 are to be borrowed, or the amount the Governor determines is
68 necessary to make timely payment of the state's obligations,
69 whichever is less. Any funds borrowed pursuant to this subsec-
70 tion shall be repaid, without interest, and redeposited to the
71 credit of the Revenue Shortfall Reserve Fund within ninety days
72 of their withdrawal.

73 (f) There is hereby created in the State Treasury the
74 "Revenue Shortfall Reserve Fund – Part B." The Revenue
75 Shortfall Reserve Fund – Part B shall consist of moneys
76 transferred from the West Virginia Tobacco Settlement Medical
77 Trust Fund pursuant to the provisions of section two, article
78 eleven-a, chapter four of this code, repayments made of the loan
79 from the West Virginia Tobacco Settlement Medical Trust Fund
80 to the physician's mutual insurance company pursuant to the
81 provisions of article twenty-f, chapter thirty-three of this code,
82 and all interest and other return earned on the moneys in the
83 Revenue Shortfall Reserve Fund – Part B. Moneys in the
84 Revenue Shortfall Reserve Fund – Part B may be expended
85 solely for the purposes set forth in subsection (d) of this section,
86 subject to the following conditions:

87 (1) No moneys in the Revenue Shortfall Reserve Fund –
88 Part B nor any interest or other return earned thereon may be
89 expended for any purpose unless all moneys in the Revenue
90 Shortfall Reserve Fund described in subsection (b) of this
91 section have first been expended, except that the interest or
92 other return earned on moneys in the Revenue Shortfall Reserve
93 Fund – Part B may be expended as provided in subdivision (2)
94 of this subsection; and

95 (2) Notwithstanding any other provision of this section to
96 the contrary, the Legislature may appropriate any interest and
97 other return earned thereon that may accrue on the moneys in

98 the Revenue Shortfall Reserve Fund – Part B after the thirtieth
99 day of June, two thousand twenty-five, for expenditure for the
100 purposes set forth in section three, article eleven-a, chapter four
101 of this code; and

102 (3) Any appropriation made from Revenue Shortfall
103 Reserve Fund – Part B shall be made only in instances of
104 revenue shortfalls or fiscal emergencies of an extraordinary
105 nature.

106 (g) Subject to the conditions upon expenditures from the
107 Revenue Shortfall Reserve Fund – Part B prescribed in subsec-
108 tion (f) of this section, in appropriating moneys pursuant to the
109 provisions of this section, the Legislature may in any fiscal year
110 appropriate from the Revenue Shortfall Reserve Fund and the
111 Revenue Shortfall Reserve Fund – Part B a total amount up to
112 but not exceeding ten percent of the total appropriations from
113 the State Fund, General Revenue, for the fiscal year just ended.

114 (h)(1) Of the moneys in the Revenue Shortfall Reserve
115 Fund, one hundred million dollars, or such greater amount as
116 may be certified as necessary by the director of the budget for
117 the purposes of subsection (e) of this section, shall be made
118 available to the West Virginia Board of Treasury Investments
119 for management and investment of the moneys in accordance
120 with the provisions of article six-c, chapter twelve of this code.
121 All other moneys in the Revenue Shortfall Reserve Fund shall
122 be made available to the West Virginia Investment Manage-
123 ment Board for management and investment of the moneys in
124 accordance with the provisions of article six, chapter twelve of
125 this code. Any balance of the Revenue Shortfall Reserve Fund
126 including accrued interest and other return earned thereon at the
127 end of any fiscal year shall not revert to the general fund but
128 shall remain in the Revenue Shortfall Reserve Fund for the
129 purposes set forth in this section.

130 (2) All of the moneys in the Revenue Shortfall Reserve
131 Fund – Part B shall be made available to the West Virginia
132 Investment Management Board for management and investment
133 of the moneys in accordance with the provisions of article six,
134 chapter twelve of this code. Any balance of the Revenue
135 Shortfall Reserve Fund – Part B including accrued interest and
136 other return earned thereon at the end of any fiscal year shall
137 not revert to the general fund but shall remain in the Revenue
138 Shortfall Reserve Fund – Part B for the purposes set forth in
139 this section.

CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations; repayment of loan.

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
28 nine-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 Settle-
36 ment 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 Settle-
47 ment Medical Trust Fund pursuant to subsection (c), section
48 two, article eleven-a, chapter four of this code pending repay-
49 ment of 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
61 replenishing the moneys appropriated therefrom under subsec-
62 tion (c), section two, article eleven-a, chapter four of this code.
63 Once the moneys appropriated from the West Virginia Tobacco
64 Settlement Medical Trust Fund have been fully replenished, the
65 treasurer shall deposit any payments from the company in
66 repayment of any outstanding loan made pursuant to section
67 nine of this article in said fund and transfer a like amount from
68 said fund to the commissioner for disbursement in accordance
69 with the provisions of sections fourteen and fourteen-a, article
70 three of this chapter.

71 (5) Notwithstanding any other provision of this code to the
72 contrary, on and after the effective date of the amendment and
73 reenactment of this section during the regular session of the
74 Legislature in two thousand six, all moneys otherwise required
75 by this section to be deposited in the West Virginia Tobacco
76 Settlement Medical Trust Fund and dedicated to replenishing
77 the moneys transferred therefrom under subsection (c), section
78 two, article eleven-a, chapter four of this code shall instead be
79 paid into the Revenue Shortfall Reserve Fund – Part B created
80 in section twenty, article two, chapter eleven-b of this code.

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


Chairman Senate Committee

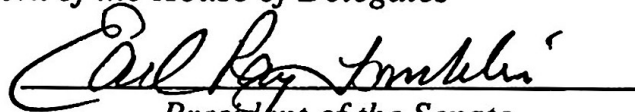

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

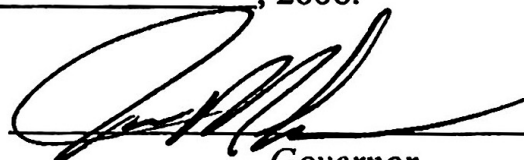

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 31st
day of March, 2006.


Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2006

Time 4:05 pm