

Senate Bill No. 369

(By Senators Kessler (Acting President), Foster and Laird)

[Introduced February 1, 2011; referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.]

A BILL to amend and reenact §30-3-10a of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-12b of said code, all relating to granting practicing medical physicians and osteopathic physicians special volunteer medical licenses so they may donate their expertise for the medical care and treatment of indigent and needy patients in a clinic setting organized, in whole or in part, for the delivery of health care services without charge; and establishing qualification, documentation, fee and immunity requirements.

Be it enacted by the Legislature of West Virginia:

That §30-3-10a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §30-14-12b of said code be amended and reenacted, 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.

(a) There is hereby established a special volunteer medical license for active physicians, physicians retired or retiring from

1 the active practice of medicine who wish to donate their expertise
2 for the medical care and treatment of indigent and needy patients
3 in the clinic setting of clinics organized, in whole or in part,
4 for the delivery of health care services without charge. The
5 special volunteer medical license shall be issued by the West
6 Virginia Board of Medicine to physicians licensed or otherwise
7 eligible for licensure under this article and the rules promulgated
8 hereunder without the payment of any application fee, license fee
9 or renewal fee, shall be issued for a fiscal year or part thereof,
10 and shall be renewable annually. The board shall develop
11 application forms for the special license provided in this
12 subsection which shall contain the physician's acknowledgment that:

13 (1) The physician's practice under the special volunteer medical
14 license will be exclusively and totally devoted to providing
15 medical care to needy and indigent persons in West Virginia; (2)
16 the physician will not receive any payment or compensation, either
17 direct or indirect, or have the expectation of any payment or
18 compensation, for any medical services rendered under the special
19 volunteer medical license; (3) the physician will supply any
20 supporting documentation that the board may reasonably require; and
21 (4) the physician agrees to continue to participate in continuing
22 medical education as required of physicians in active practice.

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

1 promise of payment or compensation is immune from liability for any
2 civil action arising out of any act or omission resulting from the
3 rendering of the medical service at the clinic unless the act or
4 omission was the result of the physician's gross negligence or
5 willful misconduct. In order for the immunity under this subsection
6 to apply, there must be a written agreement between the physician
7 and the clinic pursuant to which the physician will provide
8 voluntary noncompensated medical services under the control of the
9 clinic to patients of the clinic before the rendering of any
10 services by the physician at the clinic: *Provided*, That any clinic
11 entering into such written agreement shall be required to maintain
12 liability coverage of not less than \$1 million per occurrence.

13 (c) Notwithstanding ~~the provisions of~~ subsection (a) of this
14 section, a clinic organized, in whole or in part, for the delivery
15 of health care services without charge shall not be relieved from
16 imputed liability for the negligent acts of a physician rendering
17 voluntary medical services at or for the clinic under a special
18 volunteer medical license authorized under subsection (a) of this
19 section.

20 (d) For purposes of this section, "otherwise eligible for
21 licensure" means the satisfaction of all the requirements for
22 licensure as listed in section ten of this article and in the
23 legislative rules promulgated hereunder, except the fee
24 requirements of subsections (b) and (d) of said section and of the
25 legislative rule promulgated by the board relating to fees.

26 (e) Nothing in this section may be construed as requiring the
27 board to issue a special volunteer medical license to any physician

1 whose medical license is or has been subject to any disciplinary
2 action or to any physician who has surrendered a medical license or
3 caused such license to lapse, expire and become invalid in lieu of
4 having a complaint initiated or other action taken against his or
5 her medical license, or who has elected to place a medical license
6 in inactive status in lieu of having a complaint initiated or other
7 action taken against his or her medical license, or who have been
8 denied a medical license.

9 (f) Any policy or contract of liability insurance providing
10 coverage for liability sold, issued or delivered in this state to
11 any physician covered under ~~the provisions of~~ this article shall be
12 read so as to contain a provision or endorsement whereby the
13 company issuing such policy waives or agrees not to assert as a
14 defense on behalf of the policyholder or any beneficiary thereof,
15 to any claim covered by the terms of such policy within the policy
16 limits, the immunity from liability of the insured by reason of the
17 care and treatment of needy and indigent patients by a physician
18 who holds a special volunteer medical license: *Provided*, That this
19 subsection shall not apply to a terminated policy, terminated
20 contract of liability insurance or extended reporting endorsement
21 attached thereto that provides "tail insurance" as defined by
22 section two, article twenty-d, chapter thirty-three of this code:
23 *Provided further*, That nothing within this subsection shall be
24 construed to extend coverage under a terminated policy or
25 terminated contract of liability insurance or any extended
26 reporting endorsement attached thereto to: (1) Alter or amend the
27 effective policy period of any policy, contract of liability

1 insurance or extended reporting endorsement; or (2) cover the
2 treatment of indigent and needy patients by a physician who holds
3 a special volunteer medical license.

4 **ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**

5 **§30-14-12b. Special volunteer medical license; civil immunity for**
6 **voluntary services rendered to indigents.**

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

1 supporting documentation that the board may reasonably require; and
2 (4) the physician agrees to continue to participate in continuing
3 medical education as required of physicians in active practice.

4 (b) Any physician who renders any medical service to indigent
5 and needy patients of clinics organized, in whole or in part, for
6 the delivery of health care services without charge under a special
7 volunteer medical license authorized under subsection (a) of this
8 section without payment or compensation or the expectation or
9 promise of payment or compensation is immune from liability for any
10 civil action arising out of any act or omission resulting from the
11 rendering of the medical service at the clinic unless the act or
12 omission was the result of the physician's gross negligence or
13 willful misconduct. In order for the immunity under this
14 subsection to apply, there must be a written agreement between the
15 physician and the clinic pursuant to which the physician will
16 provide voluntary noncompensated medical services under the control
17 of the clinic to patients of the clinic before the rendering of any
18 services by the physician at the clinic: *Provided*, That any clinic
19 entering into such written agreement shall be required to maintain
20 liability coverage of not less than \$1 million per occurrence.

21 (c) Notwithstanding ~~the provisions of~~ subsection (a) of this
22 section, a clinic organized, in whole or in part, for the delivery
23 of health care services without charge shall not be relieved from
24 imputed liability for the negligent acts of a physician rendering
25 voluntary medical services at or for the clinic under a special
26 volunteer medical license authorized under subsection (a) of this
27 section.

1 (d) For purposes of this section, "otherwise eligible for
2 licensure" means the satisfaction of all the requirements for
3 licensure as listed in section ten of this article and in the
4 legislative rules promulgated hereunder, except the fee
5 requirements of subsections (b) and (d) of said section and of the
6 legislative rule promulgated by the board relating to fees.

7 (e) Nothing in this section may be construed as requiring the
8 board to issue a special volunteer medical license to any physician
9 whose medical license is or has been subject to any disciplinary
10 action or to any physician who has surrendered a medical license or
11 caused such license to lapse, expire and become invalid in lieu of
12 having a complaint initiated or other action taken against his or
13 her medical license, or who has elected to place a medical license
14 in inactive status in lieu of having a complaint initiated or other
15 action taken against his or her medical license, or who have been
16 denied a medical license.

17 (f) Any policy or contract of liability insurance providing
18 coverage for liability sold, issued or delivered in this state to
19 any physician covered under ~~the provisions of~~ this article shall be
20 read so as to contain a provision or endorsement whereby the
21 company issuing such policy waives or agrees not to assert as a
22 defense on behalf of the policyholder or any beneficiary thereof,
23 to any claim covered by the terms of such policy within the policy
24 limits, the immunity from liability of the insured by reason of the
25 care and treatment of needy and indigent patients by a physician
26 who holds a special volunteer medical license.

NOTE: The purpose of this bill is to permit practicing medical physicians and osteopathic physicians to apply for special volunteer medical licenses so they may donate their expertise for the medical care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. At present only retired physicians and physicians about to retire may be granted these special licenses.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.