

SB 371

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STATE OF WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

SENATE BILL NO. 371

(By Senator Toussin, Mr. President, et al)



PASSED APRIL 11, 1997

In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

Senate Bill No. 371

(BY SENATORS TOMBLIN, MR. PRESIDENT, WOOTON, JACKSON,
BAILEY, CRAIGO, WALKER, PLYMALE, WIEDEBUSCH, BOWMAN,
DITTMAR, KIMBLE, DUGAN, CHAFIN, SNYDER, ANDERSON,
MCKENZIE, HELMICK, OLIVERIO, SHARPE, ROSS, SCHOONOVER,
LOVE, BALL, SPROUSE, BUCKALEW, DEEM AND SCOTT)

[Passed April 11, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to further amend said chapter by adding thereto a new article, designated article forty-one, all relating to adding provisions for privileges and immunity to farmers' mutual fire insurance companies; adding provisions for privileges and immunity to hospitals, medical and dental corporations;

and adding provisions that govern scientific, nonprofit institutions; increasing an agent's license fee; adding provisions to be subject to the supervision and regulations of the insurance commissioner; adding provisions for privileges and immunity to health care corporations; adding provisions of exemption for any health maintenance organization considered to be practicing medicine; adding provisions for privileges and immunity to health maintenance organizations; making technical corrections; defining legislative intent; providing for definitions; and providing for privileges and immunity for persons reporting insurance fraud.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article twenty-four of said chapter be amended and reenacted; that section six, article twenty-five of said chapter be amended and reenacted; that section twenty-four, article twenty-five-a of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article forty-one, all to read as follows:

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Applicability of other provisions.

1 Each company to the same extent such provisions are
2 applicable to domestic mutual insurers shall be governed
3 by and be subject to the following articles of this chapter:
4 Article one (definitions); article two (insurance commis-
5 sioner); article four (general provisions) except that section
6 sixteen of said article shall not be applicable thereto;
7 article seven (assets and liabilities); article ten (rehabilita-
8 tion and liquidation) except that under the provisions of
9 section thirty-two of said article assessments shall not be
10 levied against any former member of a farmers' mutual fire
11 insurance company who is no longer a member of the
12 company at the time the order to show cause was issued;
13 article eleven (unfair trade practices); article twelve
14 (agents, brokers and solicitors) except that the agent's
15 license fee shall be five dollars; article twenty-six (West

16 Virginia insurance guaranty association act); article
17 twenty-seven (insurance holding company systems); article
18 thirty (mine subsidence insurance) except that under the
19 provisions of section six of said article, a farmers' mutual
20 insurance company shall have the option of offering mine
21 subsidence coverage to all of its policyholders but shall not
22 be required to do so; article thirty-three (annual audited
23 financial report); article thirty-four (administrative
24 supervision); article thirty-four-a (standards and commis-
25 sioner's authority for companies deemed to be in hazard-
26 ous financial condition); article thirty-five (criminal
27 sanctions for failure to report impairment); article
28 thirty-six (business transacted with producer-controlled
29 property/casualty insurer); article thirty-seven (managing
30 general agents); article thirty-nine (disclosure of material
31 transactions); article forty (risk-based capital for insurers);
32 and article forty-one (privileges and immunity); but only
33 to the extent these provisions are not inconsistent with the
34 provisions of this article.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE
CORPORATIONS, DENTAL SERVICE CORPORATIONS
AND HEALTH SERVICE CORPORATIONS.**

§33-24-4. Exemptions; applicability of insurance laws.

1 Every corporation defined in section two of this article
2 is hereby declared to be a scientific, nonprofit institution
3 and exempt from the payment of all property and other
4 taxes. Every corporation, to the same extent the provi-
5 sions are applicable to insurers transacting similar kinds
6 of insurance and not inconsistent with the provisions of
7 this article, shall be governed by and be subject to the
8 provisions as hereinbelow indicated, of the following
9 articles of this chapter: Article two (insurance commis-
10 sioner), except that, under section nine of said article,
11 examinations shall be conducted at least once every four
12 years; article four (general provisions), except that section
13 sixteen of said article shall not be applicable thereto;
14 section thirty-four, article six (fee for form and rate filing);
15 article six-c (guaranteed loss ratio); article seven (assets
16 and liabilities); article eleven (unfair trade practices);
17 article twelve (agents, brokers and solicitors), except that

18 the agent's license fee shall be twenty-five dollars; section
19 two-a, article fifteen (definitions); section two-b, article
20 fifteen (guaranteed issue); section two-d, article fifteen
21 (exception to guaranteed renewability); section two-e,
22 article fifteen (discontinuation of coverage); section two-f,
23 article fifteen (certification of creditable coverage); section
24 two-g, article fifteen (applicability); section four-e, article
25 fifteen (benefits for mothers and newborns); section
26 fourteen, article fifteen (individual accident and sickness
27 insurance); section sixteen, article fifteen (coverage of
28 children); section eighteen, article fifteen (equal treatment
29 of state agency); section nineteen, article fifteen (coordina-
30 tion of benefits with medicaid); article fifteen-a (long-term
31 care insurance); article fifteen-c (diabetes insurance);
32 section three, article sixteen (required policy provisions);
33 section three-a, article sixteen (mental health); section
34 three-c, article sixteen (group accident and sickness
35 insurance); section three-d, article sixteen (medicare
36 supplement insurance); section three-f, article sixteen
37 (treatment of temporomandibular joint disorder and
38 craniomandibular disorder); section three-j, article sixteen
39 (benefits for mothers and newborns); section three-k,
40 article sixteen (preexisting condition exclusions); section
41 three-l, article sixteen (guaranteed renewability); section
42 three-m, article sixteen (creditable coverage); section
43 three-n, article sixteen (eligibility for enrollment); section
44 eleven, article sixteen (coverage of children); section
45 thirteen, article sixteen (equal treatment of state agency);
46 section fourteen, article sixteen (coordination of benefits
47 with medicaid); section sixteen, article sixteen (diabetes
48 insurance); article sixteen-a (group health insurance
49 conversion); article sixteen-c (small employer group
50 policies); article sixteen-d (marketing and rate practices
51 for small employers); article twenty-six-a (West Virginia
52 life and health insurance guaranty association act), after
53 the first day of October, one thousand nine hundred
54 ninety-one; article twenty-seven (insurance holding
55 company systems); article twenty-eight (individual acci-
56 dent and sickness insurance minimum standards); article
57 thirty-three (annual audited financial report); article
58 thirty-four (administrative supervision); article thirty-

59 four-a (standards and commissioner's authority for
60 companies deemed to be in hazardous financial condition);
61 article thirty-five (criminal sanctions for failure to report
62 impairment); article thirty-seven (managing general
63 agents); and article forty-one (privileges and immunity);
64 and no other provision of this chapter may apply to these
65 corporations unless specifically made applicable by the
66 provisions of this article. If, however, the corporation is
67 converted into a corporation organized for a pecuniary
68 profit or if it transacts business without having obtained
69 a license as required by section five of this article, it shall
70 thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

**§33-25-6. Supervision and regulation by insurance commis-
sioner; exemption from insurance laws.**

1 Corporations organized under this article are subject to
2 supervision and regulation of the insurance commissioner.
3 The corporations organized under this article, to the same
4 extent these provisions are applicable to insurers transact-
5 ing similar kinds of insurance and not inconsistent with
6 the provisions of this article, shall be governed by and be
7 subject to the provisions as hereinbelow indicated of the
8 following articles of this chapter: Article four (general
9 provisions), except that section sixteen of said article shall
10 not be applicable thereto; article six-c (guaranteed loss
11 ratio); article seven (assets and liabilities); article eight
12 (investments); article ten (rehabilitation and liquidation);
13 section two-a, article fifteen (definitions); section two-b,
14 article fifteen (guaranteed issue); section two-d, article
15 fifteen (exception to guaranteed renewability); section
16 two-e, article fifteen (discontinuation of coverage); section
17 two-f, article fifteen (certification of creditable coverage);
18 section two-g, article fifteen (applicability); section four-e,
19 article fifteen (benefits for mothers and newborns); section
20 fourteen, article fifteen (individual accident and sickness
21 insurance); section sixteen, article fifteen (coverage of
22 children); section eighteen, article fifteen (equal treatment
23 of state agency); section nineteen, article fifteen (coordina-
24 tion of benefits with medicaid); article fifteen-c (diabetes
25 insurance); section three, article sixteen (required policy

26 provisions); section three-a, article sixteen (mental health);
27 section three-j, article sixteen (benefits for mothers and
28 newborns); section three-k, article sixteen (preexisting
29 condition exclusions); section three-l, article sixteen
30 (guaranteed renewability); section three-m, article sixteen
31 (creditable coverage); section three-n, article sixteen
32 (eligibility for enrollment); section eleven, article sixteen
33 (coverage of children); section thirteen, article sixteen
34 (equal treatment of state agency); section fourteen, article
35 sixteen (coordination of benefits with medicaid); section
36 sixteen, article sixteen (diabetes insurance); article
37 sixteen-a (group health insurance conversion); article
38 sixteen-c (small employer group policies); article sixteen-d
39 (marketing and rate practices for small employers); article
40 twenty-six-a (West Virginia life and health insurance
41 guaranty association act); article twenty-seven (insurance
42 holding company systems); article thirty-three (annual
43 audited financial report); article thirty-four-a (standards
44 and commissioner's authority for companies deemed to be
45 in hazardous financial condition); article thirty-five
46 (criminal sanctions for failure to report impairment);
47 article thirty-seven (managing general agents); and article
48 forty-one (privileges and immunity); and no other provi-
49 sion of this chapter may apply to these corporations unless
50 specifically made applicable by the provisions of this
51 article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Statutory construction and relationship to other laws.

1 (a) Except as otherwise provided in this article, provi-
2 sions of the insurance laws and provisions of hospital or
3 medical service corporation laws are not applicable to any
4 health maintenance organization granted a certificate of
5 authority under this article. The provisions of this article
6 shall not apply to an insurer or hospital or medical service
7 corporation licensed and regulated pursuant to the insur-
8 ance laws or the hospital or medical service corporation
9 laws of this state except with respect to its health mainte-
10 nance corporation activities authorized and regulated
11 pursuant to this article. The provisions of this article shall

12 not apply to an entity properly licensed by a reciprocal
13 state to provide health care services to employer groups,
14 where residents of West Virginia are members of an
15 employer group, and the employer group contract is
16 entered into in the reciprocal state. For purposes of this
17 subsection, a "reciprocal state" means a state which
18 physically borders West Virginia and which has subscriber
19 or enrollee hold harmless requirements substantially
20 similar to those set out in section seven-a of this article.

21 (b) Factually accurate advertising or solicitation regard-
22 ing the range of services provided, the premiums and
23 copayments charged, the sites of services and hours of
24 operation, and any other quantifiable, nonprofessional
25 aspects of its operation by a health maintenance organiza-
26 tion granted a certificate of authority, or its representative
27 shall not be construed to violate any provision of law
28 relating to solicitation or advertising by health professions:
29 *Provided*, That nothing contained in this subsection shall
30 be construed as authorizing any solicitation or advertising
31 which identifies or refers to any individual provider or
32 makes any qualitative judgment concerning any provider.

33 (c) Any health maintenance organization authorized
34 under this article shall not be considered to be practicing
35 medicine and is exempt from the provisions of chapter
36 thirty of this code, relating to the practice of medicine.

37 (d) The provisions of sections fifteen and twenty, article
38 four (general provisions); section seventeen, article six
39 (noncomplying forms); article six-c (guaranteed loss ratio);
40 article seven (assets and liabilities); article eight (invest-
41 ments); article nine (administration of deposits); article
42 twelve (agents, brokers, solicitors and excess line); section
43 two-a, article fifteen (definitions); section two-b, article
44 fifteen (guaranteed issue); section two-d, article fifteen
45 (exception to guaranteed renewability); section two-e,
46 article fifteen (discontinuation of coverage); section two-f,
47 article fifteen (certification of creditable coverage); section
48 two-g, article fifteen (applicability); section four-e, article
49 fifteen (benefits for mothers and newborns); section
50 fourteen, article fifteen (individual accident and sickness
51 insurance); section sixteen, article fifteen (coverage of

52 children); section eighteen, article fifteen (equal treatment
53 of state agency); section nineteen, article fifteen (coordina-
54 tion of benefits with medicaid); article fifteen-b (uniform
55 health care administration act); section three, article
56 sixteen (required policy provisions); section three-a, article
57 sixteen (mental health); section three-f, article sixteen
58 (treatment of temporomandibular disorder and
59 craniomandibular disorder); section three-j, article sixteen
60 (benefits for mothers and newborns); section three-k,
61 article sixteen (preexisting condition exclusions); section
62 three-l, article sixteen (guaranteed renewability); section
63 three-m, article sixteen (creditable coverage); section
64 three-n, article sixteen (eligibility for enrollment); section
65 eleven, article sixteen (coverage of children); section
66 thirteen, article sixteen (equal treatment of state agency);
67 section fourteen, article sixteen (coordination of benefits
68 with medicaid); section sixteen, article sixteen (diabetes
69 insurance); article sixteen-a (group health insurance
70 conversion); article sixteen-c (small employer group
71 policies); article sixteen-d (marketing and rate practices
72 for small employers); article twenty-seven (insurance
73 holding company systems); article thirty-four-a (standards
74 and commissioner's authority for companies deemed to be
75 in hazardous financial condition); article thirty-five
76 (criminal sanctions for failure to report impairment);
77 article thirty-seven (managing general agents); article
78 thirty-nine (disclosure of material transactions); and
79 article forty-one (privileges and immunity) shall be
80 applicable to any health maintenance organization granted
81 a certificate of authority under this article. In circum-
82 stances where the code provisions made applicable to
83 health maintenance organizations by this section refer to
84 the "insurer", the "corporation" or words of similar
85 import, the language shall be construed to include health
86 maintenance organizations.

87 (e) Any long-term care insurance policy delivered or
88 issued for delivery in this state by a health maintenance
89 organization shall comply with the provisions of article
90 fifteen-a of this chapter.

91 (f) A health maintenance organization granted a certifi-
 92 cate of authority under this article shall be exempt from
 93 paying municipal business and occupation taxes on gross
 94 income it receives from its enrollees, or from their employ-
 95 ers or others on their behalf, for health care items or
 96 services provided directly or indirectly by the health
 97 maintenance organization. This exemption applies to all
 98 taxable years through the thirty-first day of December,
 99 one thousand nine hundred ninety-six. The commissioner
 100 and the tax department shall conduct a study of the
 101 appropriations of imposition of the municipal business and
 102 occupation tax or other tax on health maintenance organi-
 103 zations, and shall report to the regular session of the
 104 Legislature, one thousand nine hundred ninety-seven, on
 105 their findings, conclusions and recommendations, together
 106 with drafts of any legislation necessary to effectuate their
 107 recommendations.

ARTICLE 41. PRIVILEGES AND IMMUNITY.

§33-41-1. Legislative purpose and findings.

1 It is the finding of the Legislature that the business of
 2 insurance involves many transactions that have potential
 3 for fraud, abuse and other illegal activities. It is the
 4 further finding of the Legislature that insurance fraud is
 5 a crime pursuant to state and federal statutes. The Legis-
 6 lature further finds that state, local and federal law-
 7 enforcement and regulatory agencies may prosecute fraud
 8 in accordance with these statutes, thereby ultimately
 9 reducing the cost of insurance fraud to insurers and
 10 consumers. It is the purpose of this article to encourage
 11 the detection, investigation and prosecution of persons
 12 engaging in insurance fraud by providing certain privileges
 13 and immunity.

§33-41-2. Definitions.

1 The following words when used in this article shall have
 2 the meanings set forth in this section, unless the context
 3 clearly indicates otherwise:

4 (a) "Authorized agency" means:

5 (1) The division of public safety of this state, the police
6 department of any municipality, any county sheriff's
7 department and any duly constituted criminal investiga-
8 tive department or agency of the United States or of this
9 state;

10 (2) The prosecuting attorney of any county of this state
11 or of the United States or any district thereof;

12 (3) The state insurance commissioner or the commis-
13 sioner's employees, agents or representatives;

14 (4) The national association of insurance commissioners;
15 or

16 (5) A person or agency involved in the prevention and
17 detection of fraud or that person's or agency's agents,
18 employees or representatives.

19 (b) "Benefits" means money payments, goods, services or
20 any other thing of value.

21 (c) "Claim" means an application or request for payment
22 or benefits provided under an insurance policy.

23 (d) "Commissioner" means the insurance commissioner
24 of the state of West Virginia.

25 (e) "Insurance fraud" includes, but is not limited to,
26 instances where any person who, with the intent to injure,
27 defraud or deceive any person, insurer or agency:

28 (i) Presents or causes to be presented to any insurer or
29 insurance representative any written or oral statement as
30 part of or in support of an application for insurance or a
31 claim for payment or other benefit pursuant to an insur-
32 ance policy, knowing that such statement contains any
33 false, incomplete or misleading information concerning
34 any fact or thing material to the application, claim or
35 benefit;

36 (ii) Submits or causes to be submitted to any authorized
37 agency any written or oral statement as part of or in
38 support of any application, audit, claim, report, investiga-
39 tion, valuation, statement, appraisal, estimation of loss,
40 publication, certificate, actuarial report or study, filing,

41 financial statement, tax return, rate request, petition or
42 any other such document knowing that such statement
43 contains any false, incomplete or misleading information
44 concerning any fact or thing material thereto;

45 (iii) Solicits, offers or receives any remuneration, includ-
46 ing any kickback, rebate or bribe, directly or indirectly,
47 with the intent of causing an expenditure of moneys from
48 any person or insurer which would not otherwise be
49 payable under an applicable insurance policy; and

50 (iv) Assists, abets, solicits or conspires with another to
51 commit insurance fraud.

52 (f) "Person" means any individual, partnership, firm,
53 association, corporation, company, insurer, organization,
54 society, reciprocal, business trust or any other legal entity.
55 "Person" also includes hospital service corporations,
56 medical service corporations and dental service corpora-
57 tions as defined in article twenty-four of this chapter,
58 health care corporations as defined in article twenty-five
59 of this chapter, or a health maintenance organization
60 organized pursuant to article twenty-five-a of this chapter.

§33-41-3. Privileges and immunity.

1 (a) Any person who makes a report or furnishes informa-
2 tion, written or oral, concerning suspected, anticipated or
3 completed insurance fraud to an insurer or authorized
4 agency shall be entitled to those privileges and immunities
5 heretofore existing under the common or statutory law of
6 this state, as well as the immunity established herein.

7 (b) In the absence of fraud, malice or bad faith, no person
8 or agent, employee or designee of such person shall be
9 subject to civil liability of any nature arising out of such
10 person's providing any information related to suspected,
11 anticipated or completed insurance fraud to any insurer or
12 authorized agency.

13 (c) Nothing herein shall be construed to limit, abrogate
14 or modify existing statutes or case law applicable to the
15 duties or liabilities of insurers regarding bad faith or
16 unfair trade practices.

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

Ray Schomover
.....
Chairman Senate Committee

Neil Fontana
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Harold E. Holman
.....
Clerk of the Senate

Gregory M. Bay
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

R. Ti
.....
Speaker House of Delegates

The within *is approved* this the *7th*
day of *May*, 1997.

Jeff Henderson
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/28/97

Time 2:28 pm