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HB 601

FILED

2001 DEC 12 P 4: 54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SIXTH EXTRAORDINARY SESSION, 2001

ENROLLED

House Bill No. 601

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

Passed December 1, 2001

In Effect from Passage

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H. B. 601

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)
[BY REQUEST OF THE EXECUTIVE]

[Passed December 1, 2001; in effect from passage.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-p; to amend and reenact sections two, three and five, article twelve, chapter twenty-nine of said code; and to further amend said chapter by adding thereto a new article, designated article twelve-b; to amend chapter thirty-three of said code by adding thereto two new articles, designated articles twenty-e and twenty-f; to amend and reenact sections five, six, ten and eleven, article seven-b, chapter fifty-five of said code; and to further amend said article by adding thereto four new sections, designated sections six-a, six-b, six-c and six-d; to amend and reenact section eleven, article six, chapter fifty-six of said code; and to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code, all relating to medical professional liability generally; providing certain tax credits for certain health care providers; setting forth legislative findings and purpose; defining terms; creating tax credit and providing eligibility therefor; establishing amount of

credit; providing for the forfeiture of excess credit; providing for the application of the tax credit; requiring annual schedule; effect of credit on estimated taxes; providing for the computation and application of credit; authorizing tax commissioner to promulgate legislative rules; providing for the construction of article; establishing burden of proof; relating to claiming the credit; establishing effective date for credit; providing for termination of tax credit; modifying definitions; continuing, reestablishing and reconstituting board of risk and insurance management; establishing qualifications, terms and compensation of members of the board; clarifying and expanding powers and duties of board; increasing salary of executive director; authorizing the board to employ certain employees, including legal counsel; eliminating requirement for attorney general's knowledge and consent to settlements and releases; making technical revisions; providing that board of risk and insurance management shall administer the optional medical liability insurance programs; establishing duties and reporting requirements of the board; establishing procedure for approval of board financial plans; providing rule-making authority; providing for the establishment and operation of medical professional liability insurance programs for certain physicians through the board of risk and insurance management as an alternative to commercial coverage for malpractice claims when comparable commercial coverage is not available; setting short title and legislative findings; defining terms; establishing a state medical malpractice advisory panel; establishing qualifications, terms and compensation of panel members; providing for the organization and reporting requirements of the panel; establishing medical professional liability insurance programs, including a preferred medical liability insurance program and a high-risk medical liability insurance program and exceptions to participation; establishing criteria for eligibility to participate in program; specifying powers and duties of the board of risk and insurance management relating to medical malpractice insurance; establishing special revenue account in state treasury for deposit

of collected premiums and for expenditure and investment of funds in the account; providing for payment of start-up operating expenses of the program and a pool from which claims may be paid and for amounts so paid to be reimbursed from collected premiums; authorizing the board to establish procedures for payment of claims; requiring certain documentation for payment of a medical malpractice settlement or judgment; exempting specific claim reserve information from disclosure under freedom of information act; authorizing board to post supersedeas bond when it appeals a medical malpractice judgment against a health care provider; specifying effective date; allowing policies written after the effective date to be retroactive to the effective date; providing for the establishment and operation of a medical professional liability insurance joint underwriting association; providing short title, legislative findings and stating intent and purpose; defining terms; creating medical professional liability insurance joint underwriting association and providing for the state board of risk and insurance management to exercise the powers of the association temporarily; creating a board of directors; qualifications and compensation of board members; specifying powers and duties of the association; providing for an interim plan of operation to be administered by the state board of risk and insurance management; providing for a final plan of operation to be administered by the board of directors; specifying the duties and powers of the insurance commissioner; establishing eligibility requirements for policyholders; providing for issuance of policies and guidelines for setting rates and premiums; creating a special revenue account in state treasury for deposit of initial capital, surplus and collected premiums, and for expenditure and investment of funds in the account; providing for assumption of assets and administrative control by the board of directors and a pool from which claims may be paid; clarifying premium tax liability of association; absolving state from responsibility for obligations of association; establishing methods by which a deficit in the association's accounts may be recouped and

reimbursed; requiring the commissioner to report to the board of directors when any member insurer's authority to transact insurance in this state has been terminated; providing that the association is subject to examination and regulation by the commissioner; requiring the association to submit to the commissioner an annual statement; providing that the association is immune from suit; specifying operative date; allowing policies written after the operative date to be retroactive to the effective date; authorizing the formation of a physicians mutual insurance company; setting forth a short title; establishing legislative findings and purpose; defining terms; authorizing the creation of a company; establishing the requirements and limitations of a company; establishing the immunity of the state from all debts, claims, obligations and liabilities of a company; providing for governance and organization of a company; providing for the management and administration of a company; providing for the funding of the initial policyholders' surplus; authorizing a one-time assessment against physicians to assist in funding the initial capital surplus; providing for licensure application and approval of the commissioner; setting forth the authority of the commissioner; authorizing the company to issue certain policies of insurance; providing for the transfer of policies from the state board of risk and insurance management; authorizing risk management practices; providing for the controlling law, liberal construction and severability of this article; providing for medical professional liability actions; eliminating certain third party causes of action against insurers; prescribing time when health care provider may file certain causes of action against insurer; establishing certain prerequisites for filing an action against a health care provider and providing exceptions; providing for pre-litigation mediation upon request of health care provider; providing for the tolling of the statute of limitations; establishing confidentiality of certain documents; providing parties with access to medical records and establishing procedures therefor; providing for an expedited resolution of cases against health care

providers; requiring court to convene a mandatory status conference; providing for mandatory mediation; establishing trial date; authorizing court to order a summary jury trial upon joint motion; when counsel and parties are subject to sanctions; authorizing court to direct payment of costs in certain instances; establishing summary jury trial procedures; providing for a twelve-member jury and allowing a verdict to be rendered by nine-member jury; establishing operative date of revisions; establishing severability and nonseverability of certain provisions; and increasing the filing fee for medical professional liability actions and providing for the disposition thereof.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen-p; that sections two, three and five, article twelve, chapter twenty-nine of said code be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article twelve-b; that chapter thirty-three of said code be amended by adding thereto two new articles, designated articles twenty-e and twenty-f; that sections five, six, ten and eleven, article seven-b, chapter fifty-five of said code be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections six-a, six-b, six-c and six-d; that section eleven, article six, chapter fifty-six of said code be amended and reenacted; and that sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13P. TAX CREDIT FOR MEDICAL LIABILITY INSURANCE PREMIUMS.

§11-13P-1. Legislative finding and purpose.

1 The Legislature finds that the retention of physicians
2 practicing in this state is in the public interest and promotes the
3 general welfare of the people of this state. The Legislature
4 further finds that the promotion of stable and affordable
5 medical malpractice liability insurance premium rates will
6 induce retention of physicians practicing in this state.

7 In order to effectively decrease the cost of medical liability
8 insurance premiums paid in this state on physicians' services,
9 there is hereby provided a tax credit for certain medical liability
10 insurance premiums paid.

§11-13P-2. Definitions.

1 (a) *General.* – When used in this article, or in the adminis-
2 tration of this article, terms defined in subsection (b) of this
3 section have the meanings ascribed to them by this section,
4 unless a different meaning is clearly required by the context in
5 which the term is used.

6 (b) *Terms defined.* –

7 (1) "Adjusted annual medical liability premium" means
8 statewide average of medical liability insurance premiums by
9 specialty and sub-specialty groups directly paid by eligible
10 taxpayers in those speciality and subspecialty groups during the
11 taxable year to cover physicians' services performed during the
12 year reduced by the sum of ten thousand dollars.

13 (2) "Eligible taxpayer" means any person subject to tax
14 under section sixteen, article twenty-seven of this chapter or a
15 physician who is a partner, member, shareholder or employee
16 of an eligible taxpayer.

17 (3) "Person" means and includes any natural person,
18 corporation, limited liability company, trust or partnership.

19 (4) "Physicians' services" means health care providers
20 services taxable under section sixteen, article twenty-seven of
21 this chapter performed in this state by physicians licensed by
22 the state board of medicine or the state board of osteopathic
23 medicine.

24 (5) "Statewide average medical liability insurance premi-
25 ums" are the average of premiums for each specialty and sub-
26 specialty group as determined by the state insurance commis-
27 sion.

§11-13P-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a credit
2 against the tax payable under section sixteen, article twenty-
3 seven of this chapter. The amount of this credit shall be
4 determined and applied as provided in this article.

§11-13P-4. Amount of credit allowed.

1 The amount of annual credit allowable under this article to
2 an eligible taxpayer shall be equal to ten percent of the adjusted
3 annual medical liability insurance premium for the taxpayer's
4 specialty or subspecialty group or ten percent of the taxpayer's
5 actual annual medical liability insurance premium, whichever
6 is less: *Provided,* That no credit shall be allowed for any
7 medical liability insurance premium paid on behalf of an
8 eligible taxpayer employed by the state, its agencies or subdivi-
9 sions or an eligible taxpayer organization pursuant to coverage
10 provided under article twelve, chapter twenty-nine of this code.

§11-13P-5. Excess credit forfeited.

1 If after application of the credit against tax under this
2 article, any credit remains for the taxable year, the amount
3 remaining and not used is forfeited. Unused credit may not be

4 carried back to any prior taxable year and shall not carry
5 forward to any subsequent taxable year.

§11-13P-6. Application of credit; schedules; estimated taxes.

1 (a) The credit allowed under this article shall be applied
2 against the tax payable under section sixteen, article twenty-
3 seven of this chapter.

4 (b) To assert this credit against tax, the eligible taxpayer
5 shall prepare and file with its annual tax return filed under
6 article twenty-seven of this chapter, and for information
7 purposes, a schedule showing the amount paid for medical
8 liability coverage for the taxable year, the amount of credit
9 allowed under this article, the taxes against which the credit is
10 being applied and other information that the tax commissioner
11 may require. This annual schedule shall set forth the informa-
12 tion and be in the form prescribed by the tax commissioner.

13 (c) An eligible taxpayer may consider the amount of credit
14 allowed under this article when determining the eligible
15 taxpayer's liability under article twenty-seven of this chapter
16 for periodic payments of estimated tax for the taxable year, in
17 accordance with the procedures and requirements prescribed by
18 the tax commissioner. The annual total tax liability and total tax
19 credit allowed under this article are subject to adjustment and
20 reconciliation pursuant to the filing of the annual schedule
21 required by subsection (b) of this section.

§11-13P-7. Computation and application of credit.

1 *(a) Credit resulting from premiums directly paid by persons*
2 *who pay the tax imposed by section sixteen, article twenty-seven*
3 *of this chapter.* - The annual credit allowable under this article
4 for eligible taxpayers other than payors described in subsection
5 (b) of this section, shall be applied as a credit against the
6 eligible taxpayer's state tax liability determined under section

7 sixteen, article twenty-seven of this chapter, determined after
8 application of all other allowable credits and exemptions.

9 *(b) Credit for premiums directly paid by partners, members*
10 *or shareholders of partnerships, limited liability companies, or*
11 *corporations for or on behalf of such organizations; application*
12 *of credit.* -

13 *(1) Qualification for credit.*

14 (A) For purposes of this section the term "eligible taxpayer
15 organization" means a partnership, limited liability company,
16 or corporation that is an eligible taxpayer.

17 (B) For purposes of this section the term "payor" means a
18 natural person who is a partner, member, shareholder or owner,
19 in whole or in part, of an eligible taxpayer organization and
20 who pays medical liability insurance premiums for or on behalf
21 of the eligible taxpayer organization.

22 (C) Medical liability insurance premiums paid by a payor
23 (as defined in this section) qualify for tax credit under this
24 article, provided that such payments are made to insure against
25 medical liabilities arising out of or resulting from physicians'
26 services provided by a physician while practicing in service to
27 or under the organizational identity of an eligible taxpayer
28 organization or as an employee of such eligible taxpayer
29 organization where such insurance covers the medical liability
30 of:

31 (i) the eligible taxpayer organization, or

32 (ii) one or more physicians practicing in service to or under
33 the organizational identity of the eligible taxpayer organization
34 or as an employee of the eligible taxpayer organization, or

35 (iii) any combination thereof.

36 *(2) Application of credit by the payor against health care*
37 *provider tax on physician's services.* - The annual credit
38 allowable shall be applied to reduce the tax liability directly
39 payable by the payor under section sixteen, article twenty-seven
40 of this chapter, determined after application of all other
41 allowable credits and exemptions.

42 *(3) Application of credit by the eligible taxpayer organiza-*
43 *tion against health care provider tax on physician's services.* -
44 After application of this credit as provided in subdivision (2) of
45 this subsection, remaining annual credit shall then be applied to
46 reduce the tax liability directly payable by the eligible taxpayer
47 organization under section sixteen, article twenty-seven of this
48 chapter, determined after application of all other allowable
49 credits and exemptions.

50 *(4) Apportionment among multiple eligible taxpayer*
51 *organizations.* - Where a payor described in subdivision (1) of
52 this subsection pays medical liability insurance premiums for
53 and provides services to or under the organizational identity of
54 two or more eligible taxpayer organizations described in this
55 section or as an employee of two or more such eligible taxpayer
56 organizations, the tax credit shall, for purposes of subdivision
57 (3) of this subsection, be allocated among such eligible taxpayer
58 organizations in proportion to the medical liability insurance
59 premiums paid directly by the payor during the taxable year to
60 cover physicians' services during such year for, or on behalf of,
61 each eligible taxpayer organization. In no event may the total
62 credit claimed by all eligible taxpayers and eligible taxpayer
63 organizations exceed the credit which would be allowable if the
64 payor had paid all such medical liability insurance premiums
65 for or on behalf of one eligible taxpayer organization, and if all
66 physician's services had been performed for, or under the
67 organizational identity of, or by employees of, one eligible
68 taxpayer organization.

§11-13P-8. Legislative rules.

1 The tax commissioner shall propose for promulgation
2 pursuant to the provisions of article three, chapter twenty-nine-a
3 of this code such rules as may be necessary to carry out the
4 purposes of this article.

§11-13P-9. Construction of article; burden of proof.

1 The provisions of this article shall be reasonably construed.
2 The burden of proof is on the person claiming the credit
3 allowed by this article to establish by clear and convincing
4 evidence that the person is entitled to the amount of credit
5 asserted for the taxable year.

§11-13P-10. Effective date.

1 This article shall be effective for taxable years beginning
2 after the thirty-first day of December, two thousand one:
3 *Providing*, That the assertion of the credit by an eligible
4 taxpayer shall not be allowed prior to the first day of July, two
5 thousand two.

§11-13P-11. Termination of tax credit.

1 No credit shall be allowed under this article for any taxable
2 year ending after the thirty-first day of December, two thousand
3 four.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-2. Definitions.

1 As used in this article, unless the context otherwise clearly
2 requires:

3 (a) "Board" means the state board of risk and insurance
4 management.

5 (b) "Company" means and includes corporations, associa-
6 tions, partnerships and individuals.

7 (c) "Insurance" means all forms of insurance and bonding
8 services available for protection and indemnification of the
9 state and its officials, employees, properties, activities and
10 responsibilities against loss or damage or liability, including
11 fire, marine, casualty, and surety insurance.

12 (d) "Insurance company" means all insurers or insurance
13 carriers, including, but not limited to, stock insurance compa-
14 nies, mutual insurance companies, reciprocal and interinsurance
15 exchanges, and all other types of insurers and insurance
16 carriers, including life, accident, health, fidelity, indemnity,
17 casualty, hospitalization and other types and kinds of insurance
18 companies, organizations and associations, but excepting and
19 excluding workers' compensation coverage.

20 (e) "State property activities" and "state responsibilities"
21 means and includes all operations, boards, commission, works,
22 projects and functions of the state, its properties, officials,
23 agents and employees which, within the scope and in the course
24 of governmental employment, may be subject to liability, loss,
25 damage, risks and hazards recognized to be and normally
26 included within insurance and bond coverages. "State property
27 activities" includes ambulances, as defined in section three,
28 article sixteen, chapter four-c of this code.

29 (f) "State property" means all property belonging to the
30 state of West Virginia and any boards or commissions thereof
31 wherever situated and which is the subject of risk or reasonably
32 considered to be subject to loss or damage or liability by any
33 single occurrence of any event insured against. "State property"

34 includes ambulances, as defined in section three, article ~~sixteen~~ four-c,
35 chapter ~~four-c~~ sixteen of this code.

§29-12-3. State board of risk and insurance management; creation, composition, qualifications, and compensation.

1 (a) (1) The "state board of insurance of West Virginia" is
2 hereby reestablished, reconstituted and continued as the state
3 board of risk and insurance management. The board shall be
4 composed of five members. One member shall be the vice
5 chancellor of health sciences of the West Virginia higher
6 education policy commission. The remaining four members
7 shall be appointed by the governor with the advice and consent
8 of the Senate. One member shall be appointed by the governor
9 from a list of three eligible persons submitted to the governor
10 by the president of the senate, and one member shall be
11 appointed by the governor from a list of three eligible persons
12 submitted to the governor by the speaker of the house of
13 delegates. Each member shall be a resident of West Virginia
14 and shall have experience in one or more of the following areas:
15 law, accounting, business, insurance or actuarial science.

16 (2) Initial appointment of the members other than the vice
17 chancellor for health sciences shall be for the following terms:

18 One member shall be appointed for a term ending the
19 thirtieth day of June, two thousand three;

20 One member shall be appointed for a term ending the
21 thirtieth day of June, two thousand four;

22 One member shall be appointed for a term ending the
23 thirtieth day of June, two thousand five; and

24 One member shall be appointed for a term ending the
25 thirtieth day of June, two thousand six.

26 (3) Except for appointments to fill vacancies, each subse-
27 quent appointment shall be for a term ending the thirtieth day
28 of June of the fourth year following the year the preceding term
29 expired. In the event a vacancy occurs it shall be filled by
30 appointment for the unexpired term. A member whose term has
31 expired shall continue in office until a successor has been duly
32 appointed and qualified. No member of the board may be
33 removed from office by the governor except for official
34 misconduct, incompetency, neglect of duty, or gross immoral-
35 ity.

36 (4) Members of the board appointed prior to the
37 reenactment of this article during the sixth extraordinary
38 session of the Legislature, two thousand one, shall serve until
39 the fifteen day of December two thousand one.

40 (b) The insurance commissioner of West Virginia shall
41 serve as secretary of the board without vote and shall make
42 available to the board the information, facilities and services of
43 the office of the state insurance commissioner.

44 (c) The members of the board shall receive from the
45 executive director of the board the same compensation autho-
46 rized by law for members of the Legislature for the interim
47 duties for each day, or portion thereof, the member is engaged
48 in the discharge of official duties. All board members shall be
49 reimbursed for their actual and necessary expenses incurred in
50 the discharge of official duties, except that mileage shall be
51 reimbursed at the same rate as that authorized for members of
52 the Legislature.

53 (d) Notwithstanding any provision of this section to the
54 contrary, the board is subject to the provisions of section twelve
55 of this article.

§29-12-5. Powers and duties of board.

1 (a) The board shall have general supervision and control
2 over the insurance of all state property, activities and responsi-
3 bilities, including the acquisition and cancellation thereof;
4 determination of amount and kind of coverage, including, but
5 not limited to, deductible forms of insurance coverage, inspec-
6 tions or examinations relating thereto, reinsurance, and any and
7 all matters, factors and considerations entering into negotiations
8 for advantageous rates on and coverage of all such state
9 property, activities and responsibilities. The board shall have
10 the authority to employ an executive director for an annual
11 salary of seventy thousand dollars and such other employees,
12 including legal counsel, as may be necessary to carry out its
13 duties. The legal counsel may represent the board before any
14 judicial or administrative tribunal and perform such other duties
15 as may be requested by the board. Any policy of insurance
16 purchased or contracted for by the board shall provide that the
17 insurer shall be barred and estopped from relying upon the
18 constitutional immunity of the state of West Virginia against
19 claims or suits: *Provided,* That nothing herein shall bar the
20 insurer of political subdivisions from relying upon any statutory
21 immunity granted such political subdivisions against claims or
22 suits. The board may enter into any contracts necessary to the
23 execution of the powers granted to it by this article. It shall
24 endeavor to secure the maximum of protection against loss,
25 damage or liability to state property and on account of state
26 activities and responsibilities by proper and adequate insurance
27 coverage through the introduction and employment of sound
28 and accepted methods of protection and principles of insurance.
29 It is empowered and directed to make a complete survey of all
30 presently owned and subsequently acquired state property
31 subject to insurance coverage by any form of insurance, which
32 survey shall include and reflect inspections, appraisals, expo-
33 sures, fire hazards, construction, and any other objectives or
34 factors affecting or which might affect the insurance protection
35 and coverage required. It shall keep itself currently informed on

36 new and continuing state activities and responsibilities within
37 the insurance coverage herein contemplated. The board shall
38 work closely in cooperation with the state fire marshal's office
39 in applying the rules of that office insofar as the appropriations
40 and other factors peculiar to state property will permit. The
41 board is given power and authority to make rules governing its
42 functions and operations and the procurement of state insur-
43 ance.

44 The board is hereby authorized and empowered to negotiate
45 and effect settlement of any and all insurance claims arising on
46 or incident to losses of and damages to state properties,
47 activities and responsibilities hereunder and shall have authority
48 to execute and deliver proper releases of all such claims when
49 settled. The board may adopt rules and procedures for handling,
50 negotiating and settlement of all such claims. Any discussion
51 or consideration of the financial or personal information of an
52 insured may be held by the board in executive session closed to
53 the public, notwithstanding the provisions of article nine-a,
54 chapter six of this code.

55 (b) If requested by a political subdivision or by a charitable
56 or public service organization, the board is authorized to
57 provide property and liability insurance to the political subdivi-
58 sions or such organizations to insure their property, activities
59 and responsibilities. Such board is authorized to enter into any
60 necessary contract of insurance to further the intent of this
61 subsection.

62 The property insurance provided by the board, pursuant to
63 this subsection, may also include insurance on property leased
64 to or loaned to the political subdivision or such organization
65 which is required to be insured under a written agreement.

66 The cost of this insurance, as determined by the board, shall
67 be paid by the political subdivision or the organization and may

68 include administrative expenses. All funds received by the
69 board, (including, but not limited to, state agency premiums,
70 mine subsidence premiums, and political subdivision premi-
71 ums) shall be deposited with the West Virginia investment
72 management board with the interest income and returns on
73 investment a proper credit to such property insurance trust fund
74 or liability insurance trust fund, as applicable.

75 "Political subdivision" as used in this subsection shall have
76 the same meaning as in section three, article twelve-a of this
77 chapter.

78 Charitable or public service organization as used in this
79 subsection means a bona fide, not for profit, tax-exempt,
80 benevolent, educational, philanthropic, humane, patriotic, civic,
81 religious, eleemosynary, incorporated or unincorporated
82 association or organization or a rescue unit or other similar
83 volunteer community service organization or association, but
84 does not include any nonprofit association or organization,
85 whether incorporated or not, which is organized primarily for
86 the purposes of influencing legislation or supporting or promot-
87 ing the campaign of any candidate for public office.

88 (c) (1) The board shall have general supervision and control
89 over the optional medical liability insurance programs provid-
90 ing coverage to health care providers as authorized by the
91 provisions of article twelve-b of this chapter. The board is
92 hereby granted and may exercise all powers necessary or
93 appropriate to carry out and effectuate the purposes of this
94 article.

95 (2) The board shall:

96 (A) Administer the preferred medical liability program and
97 the high risk medical liability program and exercise and
98 perform other powers, duties and functions specified in this
99 article;

100 (B) Obtain and implement, at least annually, from an
101 independent outside source, such as a medical liability actuary
102 or a rating organization experienced with the medical liability
103 line of insurance, written rating plans for the preferred medical
104 liability program and high risk medical liability program on
105 which premiums shall be based;

106 (C) Prepare and annually review written underwriting
107 criteria for the preferred medical liability program and the high
108 risk medical liability program. The board may utilize review
109 panels, including but not limited to, the same specialty review
110 panels to assist in establishing criteria;

111 (D) Prepare and publish, before each regular session of the
112 Legislature, separate summaries for the preferred medical
113 liability program and high risk medical liability program
114 activity during the preceding fiscal year, each summary to
115 include, but not be limited to, an audited financial statement
116 which shall follow the accounting practices and procedures
117 prescribed by the national association of insurance commission-
118 ers procedures manual, as amended, and which shall include a
119 balance sheet, income statement and cash flow statement, an
120 actuarial opinion addressing adequacy of reserves, the highest
121 and lowest premiums assessed, the number of claims filed with
122 the program by provider type, the number of judgments and
123 amounts paid from the program, the number of settlements and
124 amounts paid from the program and the number of dismissals
125 without payment;

126 (E) Determine and annually review the claims history debit
127 or surcharge for the high risk medical liability program;

128 (F) Determine and annually review the criteria for transfer
129 from the preferred medical liability program to the high risk
130 medical liability program;

131 (G) Determine and annually review the role of independent
132 agents, the amount of commission, if any, to be paid therefor,
133 and agent appointment criteria;

134 (H) Study and annually evaluate the operation of the
135 preferred medical liability program and the high risk medical
136 liability program, and make recommendations to the Legisla-
137 ture, as may be appropriate, to ensure their viability, including
138 but not limited to, recommendations for civil justice reform
139 with an associated cost-benefit analysis, recommendations on
140 the feasability and desirability of a plan which would require all
141 health care providers in the state to participate with an associ-
142 ated cost-benefit analysis, recommendations on additional
143 funding of other state run insurance plans with an associated
144 cost-benefit analysis and recommendations on the desirability
145 of ceasing to offer a state plan with an associated analysis of a
146 potential transfer to the private sector with a cost-benefit
147 analysis, including impact on premiums;

148 (I) Establish a five-year financial plan to ensure an adequate
149 premium base to cover the long tail nature of the claims-made
150 coverage provided by the preferred medical liability program
151 and the high risk medical liability program. The plan shall be
152 designed to meet the program's estimated total financial
153 requirements, taking into account all revenues projected to be
154 made available to the program, and apportioning necessary
155 costs equitably among participating classes of health care
156 providers.

157 For these purposes, the board shall:

158 (i) Retain the services of an impartial, professional actuary,
159 with demonstrated experience in analysis of large group
160 malpractice plans, to estimate the total financial requirements
161 of the program for each fiscal year and to review and render
162 written professional opinions as to financial plans proposed by

163 the board. The actuary shall also assist in the development of
164 alternative financing options and perform any other services
165 requested by the board or the executive director. All reasonable
166 fees and expenses for actuarial services shall be paid by the
167 board. Any financial plan or modifications to a financial plan
168 approved or proposed by the board pursuant to this section shall
169 be submitted to and reviewed by the actuary and may not be
170 finally approved and submitted to the governor and to the
171 Legislature without the actuary's written professional opinion
172 that the plan may be reasonably expected to generate sufficient
173 revenues to meet all estimated program and administrative
174 costs, including incurred but not reported claims, for the fiscal
175 year for which the plan is proposed. The actuary's opinion for
176 any fiscal year shall include a requirement for establishment of
177 a reserve fund;

178 (ii) Submit its final, approved five-year financial plan, after
179 obtaining the necessary actuary's opinion, to the governor and
180 to the Legislature no later than the first day of January preced-
181 ing the fiscal year. The financial plan for a fiscal year becomes
182 effective and shall be implemented by the executive director on
183 the first day of July of the fiscal year. In addition to each final,
184 approved financial plan required under this section, the board
185 shall also simultaneously submit an audited financial statements
186 which shall follow the accounting practices and procedures
187 prescribed by the national association of insurance commission-
188 ers procedures manual, as amended, and which shall include
189 allowances for incurred but not reported claims: *Provided,* That
190 the financial statements and the accrual-based financial plan
191 restatement shall not affect the approved financial plan. The
192 provisions of chapter twenty-nine-a of this code shall not apply
193 to the preparation, approval and implementation of the financial
194 plans required by this section;

195 (iii) Submit to the governor and the Legislature a prospec-
196 tive five-year financial plan beginning on the first day of

197 January, two thousand three, and every year thereafter, for the
198 programs established by the provisions of article twelve-b of
199 this chapter. Factors that the board shall consider include, but
200 shall not be limited to, the trends for the program and the
201 industry; claims history, number and category of participants in
202 each program; settlements and claims payments; and judicial
203 results;

204 (iv) Obtain annually, certification from participants that
205 they have made a diligent search for comparable coverage in
206 the voluntary insurance market and have been unable to obtain
207 the same;

208 (J) Meet on at least a quarterly basis to review implementa-
209 tion of its current financial plan in light of the actual experience
210 of the medical liability programs established in article twelve-b
211 of this chapter. The board shall review actual costs incurred,
212 any revised cost estimates provided by the actuary, expendi-
213 tures and any other factors affecting the fiscal stability of the
214 plan and may make any additional modifications to the plan
215 necessary to ensure that the total financial requirements of these
216 programs for the current fiscal year are met;

217 (K) To analyze the benefit of and necessity for excess
218 verdict liability coverage;

219 (L) Consider purchasing reinsurance, in the amounts as it
220 may from time to time determine is appropriate, and the cost
221 thereof shall be considered to be an operating expense of the
222 board;

223 (M) Make available to participants, optional extended
224 reporting coverage or tail coverage: *Provided,* That, at least five
225 working days prior to offering such coverage to a participant or
226 participants, the board shall notify the president of the Senate
227 and the speaker of the House of Delegates in writing of its

228 intention to do so, and such notice shall include the terms and
229 conditions of the coverage proposed;

230 (N) Review and approve, reject or modify rules that are
231 proposed by the executive director to implement, clarify or
232 explain administration of the preferred medical liability
233 program and the high risk medical liability program. Notwith-
234 standing any provisions in this code to the contrary, rules
235 promulgated pursuant to this paragraph are not subject to the
236 provisions of sections nine through sixteen, article three,
237 chapter twenty-nine-a of this code. The board shall comply with
238 the remaining provisions of article three and shall hold hearings
239 or receive public comments before promulgating any proposed
240 rule filed with the secretary of state: *Provided,* That the initial
241 rules proposed by the executive director and promulgated by
242 the board shall become effective upon approval by the board
243 notwithstanding any provision of this code;

244 (O) Enter into settlements and structured settlement
245 agreements whenever appropriate. The policy may not require
246 as a condition precedent to settlement or compromise of any
247 claim the consent or acquiescence of the policy holder. The
248 board may own or assign any annuity purchased by the board to
249 a company licensed to do business in the state;

250 (P) Refuse to provide insurance coverage for individual
251 physicians whose prior loss experience or current professional
252 training and capability are such that the physician represents an
253 unacceptable risk of loss if coverage is provided.

254 (Q) Terminate coverage for nonpayment of premiums upon
255 written notice of the termination forwarded to the health care
256 provider not less than thirty days prior to termination of
257 coverage;

258 (R) Assign coverage or transfer all insurance obligations
259 and/or risks of existing or in-force contracts of insurance to a

260 third party medical professional liability insurance carrier with
261 the comparable coverage conditions as determined by the
262 board. Any transfer of obligation or risk shall effect a novation
263 of the transferred contract of insurance and if the terms of the
264 assumption reinsurance agreement extinguish all liability of the
265 board and the state of West Virginia such extinguishment shall
266 be absolute as to any and all parties; and

267 (S) Meet and consult with and consider recommendations
268 from the medical malpractice advisory panel established by the
269 provisions of article twelve-b of this chapter.

270 (d) If, after the first day of September, two thousand two,
271 the board has assigned coverages or transferred all insurance
272 obligations and/or risks of existing or in-force contracts of
273 insurance to a third party medical professional liability insur-
274 ance carrier, and the board otherwise has no covered partici-
275 pants, then the board shall not thereafter offer or provide
276 professional liability insurance to any health care provider
277 pursuant to the provisions of subsection (c) of this section or the
278 provisions of article twelve-b of this chapter unless the Legisla-
279 ture adopts a concurrent resolution authorizing the board to
280 reestablish medical liability insurance programs.

ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFESSIONAL LIABILITY INSURANCE AVAILABILITY ACT.

§29-12B-1. Short title.

1 This article may be cited as the "West Virginia Health Care
2 Provider Professional Liability Insurance Availability Act."

§29-12B-2. Legislative findings.

1 The Legislature finds and declares that there is a need for
2 the state of West Virginia to assist in making professional
3 liability insurance available for certain necessary health care

4 providers in West Virginia to assure that quality medical care
5 is available for the citizens of the state.

§29-12B-3. Definitions.

1 As used in this article, the following terms have the
2 meanings set forth herein:

3 (a) "Board" means the state board of risk and insurance
4 management.

5 (b) "Health care provider" means:

6 (1) A person licensed by the West Virginia board of
7 medicine to practice medicine in this state;

8 (2) A person licensed by the West Virginia board of
9 osteopathy to practice medicine in this state;

10 (3) A podiatrist licensed by the West Virginia board of
11 medicine;

12 (4) An optometrist licensed by the West Virginia board of
13 optometry;

14 (5) A pharmacist licensed by the West Virginia board of
15 pharmacy;

16 (6) A registered nurse holding an advanced practice
17 announcement from the West Virginia board of examiners for
18 registered professional nurses;

19 (7) A physician's assistant licensed by either the West
20 Virginia board of medicine or the West Virginia board of
21 osteopathy;

22 (8) A dentist licensed by the West Virginia board of dental
23 examiners;

24 (9) A physical therapist licensed by the West Virginia board
25 of physical therapy;

26 (10) A chiropractor licensed by the West Virginia board of
27 chiropractic;

28 (11) A professional limited liability company or medical
29 corporation certified by the state board of medicine;

30 (12) An association, partnership or other entity organized
31 for the purpose of rendering professional services by persons
32 who are health care providers;

33 (13) A hospital, medical clinic, psychiatric hospital or other
34 medical facility authorized by law to provide professional
35 medical services; and

36 (14) Such other health care provider as the board may from
37 time to time approve, and for whom an adequate rate can be
38 established.

39 "Health care provider" does not include any provider of
40 professional medical services that has medical malpractice
41 insurance pursuant to article twelve of this chapter.

42 (b) "Sexual acts" means that sexual conduct which consti-
43 tutes a criminal or tortious act under the laws of West Virginia.

44 (c) "Prior acts" coverage means coverage for claims arising
45 out of the providing of medical services, including medical
46 treatment, which are first reported to the board during the
47 effective policy period, but which occurred on or after the
48 retroactive date reported in the policy declarations.

49 (d) "High risk" means the probability of loss is greater than
50 average based on criteria specified in this article and established
51 by the board.

52 (e)"Retroactive date" means the date designated in the
53 policy declarations, before which coverage is not applicable.

54 (f) "Tail coverage" or "extended reporting coverage" is
55 coverage that protects the health care provider against all claims
56 arising from professional services performed while the claims-
57 made policy was in effect and included in the policy but
58 reported after the termination of the policy.

§29-12B-4. State medical malpractice advisory panel; creation, composition, duties and compensation.

1 (a) (1) There is hereby created, under the direction and
2 control of the board, the medical malpractice advisory panel.
3 The panel shall be composed of seven members appointed by
4 the governor with the advice and consent of the senate. Each
5 member shall be a resident of West Virginia. No more than
6 three members may reside in the same congressional district, no
7 more than two members may reside in the same county, and no
8 more than four members may belong to the same political party.

9 (2) Initial appointment of the members shall be for the
10 following terms:

11 One member shall be appointed for a term ending the
12 thirtieth day of June, two thousand two;

13 Two members shall be appointed for a term ending the
14 thirtieth day of June, two thousand three;

15 Two members shall be appointed for a term ending the
16 thirtieth day of June, two thousand four; and

17 Two members shall be appointed for a term ending the
18 thirtieth day of June, two thousand five.

19 (3) Except for appointments to fill vacancies, each subse-
20 quent appointment shall be for a term ending the thirtieth day
21 of June of the fourth year following the year the preceding term
22 expired. In the event a vacancy occurs it shall be filled by
23 appointment for the unexpired term. A member whose term has
24 expired shall continue in office until a successor has been duly
25 appointed and qualified. No member of the panel may be
26 removed from office by the governor except for official
27 misconduct, incompetency, neglect of duty, or gross immoral-
28 ity.

29 (4) The panel shall consist of the following:

30 (A) A physician licensed in this state by the state board of
31 medicine recommended from a list of three candidates from a
32 specialty area and three candidates from a non-specialty area
33 submitted by the state medical association;

34 (B) A physician licensed by the state board of osteopathy
35 recommended from a list of three candidates submitted by the
36 state society of osteopathic medicine;

37 (C) A physician licensed by the state board of medicine
38 from a specialty area recommended from the list of three
39 candidates submitted by the West Virginia academy of family
40 practitioners;

41 (D) A chief executive officer or chief financial officer of a
42 hospital recommended from a list of three submitted by the
43 state hospital association;

44 (E) One consumer or consumer representative;

45 (F) One person with training or experience in underwriting;
46 and

47 (G) A person with training or experience in insurance
48 industry management.

49 (b) The members of the panel shall receive from the
50 executive director of the board the same compensation autho-
51 rized by law for members of the Legislature for their interim
52 duties for each day, or portion thereof, the member is engaged
53 in the discharge of official duties. All panel members shall be
54 reimbursed for their actual and necessary expenses incurred in
55 the discharge of official duties, except that mileage shall be
56 reimbursed at the same rate as that authorized for members of
57 the Legislature.

58 (c) The panel shall advise the board with regard to those
59 duties imposed on the board by the provisions of this article and
60 the provisions of subsection (c), section five, article twelve of
61 this chapter relating to medical professional liability insurance.

§29-12B-5. Organization, meetings, records and reports of panel.

1 (a) The panel shall select one of its members as chairman
2 and shall meet in the office of the board upon the call of the
3 board. The panel shall keep records of all of its proceedings
4 which shall be public and open to inspection: *Provided,* That
5 any discussion or consideration of the financial or personal
6 information of an insured may be held by the panel in executive
7 session closed to the public, notwithstanding the provisions of
8 article nine-a, chapter six of this code. The panel shall exercise
9 and perform the duties prescribed by this article.

10 (b) The panel shall report in writing to the board and the
11 legislative auditor on or before the thirty-first day of August of
12 each year. Such report shall contain a summary of the panel's
13 proceedings during the preceding fiscal year.

§29-12B-6. Health care provider professional liability insurance programs.

1 (a) There is hereby established through the board of risk
2 and insurance management optional insurance for health care
3 providers consisting of a preferred professional liability
4 insurance program and a high risk professional liability
5 insurance program.

6 (b) Each of the programs described in subsection (a) of this
7 section shall provide claims-made coverage for any covered act
8 or omission resulting in injury or death arising out of medical
9 professional liability as defined in subsection (d), section two,
10 chapter fifty-five of this code.

11 (c) Each of the programs described in subsection (a) of this
12 section shall offer optional prior acts coverage from and after
13 a retroactive date established by the policy declarations. The
14 premium for prior acts coverage may be based upon a five-year
15 maturity schedule depending on the years of prior acts expo-
16 sure, as more specifically set forth in a written rating manual
17 approved by the board.

18 (d) Each of the programs described in subsection (a) of this
19 section shall further provide an option to purchase an extended
20 reporting endorsement or tail coverage.

21 (e) Each of the programs described in subsection (a) of this
22 section shall offer limits for each health care provider in the
23 amount of one million dollars per claim, including repeated
24 exposure to the same event or series of events, and all deriva-
25 tive claims, and three million dollars in the annual aggregate.
26 Health care providers have the option to purchase higher limits
27 of up to two million dollars per claim, including repeated
28 exposure to the same event or series of events, and all deriva-
29 tive claims, and up to four million dollars in the annual aggre-
30 gate. In addition, hospitals covered by the plan shall have
31 available limits of three million dollars per claim, including
32 repeated exposure to the same event or series of events, and all

33 derivative claims, and five million dollars in the annual
34 aggregate. Installment payment plans as established in the
35 rating manual shall be available to all participants.

36 (f) Each of the programs described in subsection (a) of this
37 section shall cover any act or omission resulting in injury or
38 death arising out of medical professional liability as defined in
39 subsection(d), section two, article seven-b, chapter fifty-five of
40 this code. The board shall exclude from coverage sexual acts as
41 defined in subdivision (e), section three of this article, and shall
42 have the authority to exclude other acts or omission from
43 coverage.

44 (g) Each of the programs described in subsection (a) of this
45 section shall apply to damages, except punitive damages, for
46 medical professional liability as defined in subsection (d),
47 section two, article seven-b, chapter fifty-five of this code.

48 (h) The board may, but is not required, to obtain excess
49 verdict liability coverage for the programs described in subsec-
50 tion (a) of this section.

51 (i) Each of the programs shall be liable to the extent of the
52 limits purchased by the health care provider as set forth in
53 subsection (e) of this section. In the event that a claimant and a
54 health care provider are willing to settle within those limits
55 purchased by the health care provider, but the board refuses or
56 declines to settle, and the ultimate verdict is in excess of the
57 purchased limits, the board shall not be liable for the portion of
58 the verdict in excess of the coverage provided in subsection (e)
59 of this section unless the board acts in bad faith, with actual
60 malice, in declining or refusing to settle: *Provided*, That if the
61 board has in effect applicable excess verdict liability insurance,
62 the health care provider shall not be required to prove that the
63 board acted with actual malice in declining or refusing to settle
64 in order to be indemnified for that portion of the verdict in

65 excess of the limits of the purchased policy and within the
66 limits of the excess liability coverage. Notwithstanding any
67 provision of this code to the contrary, the board shall not be
68 liable for any verdict in excess of the combined limit of the
69 purchased policy and any applicable excess liability coverage
70 unless the board acts in bad faith with actual malice.

71 (j) Rates for each of the programs described in subsection
72 (a) of this section may not be excessive, inadequate or unfairly
73 discriminatory: *Provided* That, the rates charged for the
74 preferred professional liability insurance program shall not be
75 less than the highest approved comparable base rate for a
76 licensed carrier providing five percent of the malpractice
77 insurance coverage in this state for the previous calendar year
78 on file with the insurance commissioner: *Provided, however,*
79 That if there is only one licensed carrier providing five percent
80 or more of the malpractice insurance coverage in the state
81 offering comparable coverage, the board shall have discretion
82 to disregard the approved comparable base rate of the licensed
83 carrier.

84 (k) The premiums for each of the programs described in
85 subsection (a) of this section are subject to premium taxes
86 imposed by article three, chapter thirty-three of this code,
87 assessments pursuant to the West Virginia insurance guaranty
88 association act set forth in article twenty-six, chapter
89 thirty-three of this code, and any other assessment against
90 premiums.

91 (l) Nothing in this article shall be construed to preclude a
92 health care provider from obtaining professional liability
93 insurance coverage for claims in excess of the coverage made
94 available by the provisions of this article.

§29-12B-7. Eligibility criteria for participation in health care provider professional liability insurance programs.

1 (a) Only those health care providers unable to obtain
2 medical professional liability insurance because it is not
3 available through the voluntary insurance market from insurers
4 licensed to transact insurance in West Virginia at rates ap-
5 proved by the commissioner are eligible to obtain coverage
6 pursuant to the provisions of this article: *Provided*, That any
7 health care provider who can obtain medical professional
8 liability insurance only pursuant to a "consent to" or "guide A"
9 rate agreement is eligible to obtain coverage. Any health care
10 provider who has medical professional liability insurance
11 pursuant to the provisions of article twelve, chapter twenty-nine
12 of this code is not eligible to obtain insurance pursuant to the
13 provisions of this article.

14 (b) In addition to other eligibility criteria for participation
15 in the health care provider professional liability insurance
16 program established by the provisions of this article or criteria
17 imposed by the board, every participant in the programs shall:

18 (1) Maintain a policy of not excluding patients whose
19 health care coverage is provided through the West Virginia
20 public employees insurance plan, the West Virginia children's
21 health insurance program, West Virginia medicaid or the West
22 Virginia worker's compensation fund based solely on the fact
23 that the person's health care coverage is provided by any of the
24 aforementioned entities;

25 (2) Annually participate, at his or her own expense, in a risk
26 management program approved by the board relating to risk
27 management; and

28 (3) Agree in writing to the board's authority to assign his or
29 her policy, individually or collectively, to a third party if the
30 third party coverage is comparable, as determined by the board.

§29-12B-8. Preferred professional liability insurance program.

1 (a) Eligibility to participate in the preferred professional
2 liability insurance program shall be determined by underwriting
3 criteria approved by the board and set forth in a written
4 underwriting manual, and shall be subject to rates approved by
5 the board and set forth in a written rating manual. Participation
6 in the preferred professional liability insurance program shall
7 not be limited based on geographic location or specialty, but
8 may be limited based upon indemnity loss history, number of
9 patient exposures, refusal to participate in risk management/loss
10 control programs or any other grounds the board may approve,
11 as set forth in a written underwriting manual. The board shall
12 periodically review its underwriting manual and make any
13 changes it considers necessary or appropriate.

14 (b) Qualification for participation in the preferred profes-
15 sional liability insurance program shall be reviewed each year,
16 and any participant may be transferred to the high risk profes-
17 sional liability insurance program, as set forth in the written
18 underwriting manual approved by the board.

§29-12B-9. High risk professional liability insurance program.

1 (a) The rate charged participants in the high risk profes-
2 sional liability insurance program may be higher than those
3 established and approved by the board for participants in the
4 preferred professional insurance program as set forth in a
5 written rating manual. Risks may be refused coverage under
6 criteria approved by the board, as set forth in its underwriting
7 manual. The board of risk and insurance management shall
8 periodically review its underwriting manual and make any
9 changes it deems necessary or appropriate.

10 (b) If a majority of the board determines that a health care
11 provider covered by one of the programs created by this article
12 presents an extreme risk because of the number of claims filed
13 against him or her or the outcome of such claims, said board
14 may, after notice and a hearing in accordance with the provi-
15 sions of the West Virginia administrative procedures act,
16 chapter twenty-nine-a of this code, terminate coverage for all
17 claims against that health care provider. Coverage shall
18 terminate thirty days after the board's decision. Upon termina-
19 tion of coverage under this subsection, the board shall notify the
20 licensing or disciplinary board having jurisdiction over the
21 health care provider of said provider's name and of the reasons
22 for termination of the coverage.

23 (c) The board may terminate coverage for a health care
24 provider's failure to pay premiums by providing written notice
25 of such termination by first-class mail no less than thirty days
26 prior to termination of coverage.

§29-12B-10. Deposit, expenditure and investment of premiums.

1 (a) The premiums charged and collected by the board under
2 this article shall be deposited into a special revenue account
3 hereby created in the state treasury known as the "Medical
4 Liability Fund", and shall not be part of the general revenues of
5 the state. Disbursements from the special revenue fund shall be
6 upon requisition of the executive director and in accordance
7 with the provisions of chapter five-a of this code. Disburse-
8 ments shall pay operating expenses of the board attributed to
9 these programs and the board's share of any judgments or
10 settlements of medical malpractice claims. Funds shall be
11 invested with the consolidated fund managed by the West
12 Virginia investment management board and interest earned
13 shall be used for purposes of this article.

14 (b) Start-up operating expenses of the medical liability
15 fund, not to exceed five hundred thousand dollars, may be
16 transferred to the medical liability fund pursuant to an appropri-
17 ation by the Legislature from any special revenue funds
18 available. The medical liability fund shall reimburse the board
19 within twenty-four months of the date of the transfer.

20 (c) For purposes of establishing a pool from which settle-
21 ments and judgments may be paid, a portion of the initial
22 capitalization of the pool may be provided by the Legislature in
23 an amount, upon terms and conditions, and from sources as may
24 be determined by the Legislature in its sole discretion.

§29-12B-11. Payments for settlement or judgment.

1 All payments made in satisfaction of any settlement or
2 judgment shall be in accordance with the procedures established
3 by the board. No settlement or judgment may be paid until there
4 is recorded in the office of the executive director: (1) A
5 certified copy of a final judgment against a health care provider
6 insured by either of the medical liability programs created
7 pursuant to this article, or a certified copy of an order approving
8 settlement in a summary proceeding; or (2) appropriate
9 settlement documentation to include a written settlement
10 determination issued by or on behalf of the board.

§29-12B-12. Information exempt from disclosure.

1 Any specific claim reserve information is exempt from
2 public disclosure under the freedom of information act set forth
3 in article one, chapter twenty-nine-b of this code.

§29-12B-13. Appeal bond.

1 In the event of a judgment against a health care provider
2 from which the health care provider or the board wishes to
3 appeal, the board is not liable for more than its share of the

4 coverage and, as to that portion, a supersedeas bond signed by
5 the board's administrator or his or her designee, shall suffice
6 without further surety or other security.

§29-12B-14. Effective date.

1 The provisions of this article are effective from passage.
2 Any policies written under this article may have an effective
3 date retroactive to the effective date of this article.

CHAPTER 33. INSURANCE.

ARTICLE 20E. WEST VIRGINIA MEDICAL PROFESSIONAL LIABILITY INSURANCE JOINT UNDERWRITING ASSOCIATION ACT.

§33-20E-1. Short title.

1 This article may be cited as the "West Virginia Medical
2 Professional Liability Insurance Joint Underwriting Association
3 Act."

§33-20E-2. Legislative findings.

1 The Legislature finds and declares:

2 (a) That recent developments in the voluntary insurance
3 market have made it impossible for certain West Virginia health
4 care providers to obtain professional liability insurance cover-
5 age from insurers licensed to transact insurance in this state;

6 (b) That the unavailability of such insurance will have a
7 deleterious effect on the quality and availability of public health
8 programs and services to the citizens of this state;

9 (c) That it is in the best interests of the citizens of this state
10 to preserve the quality and availability of public health pro-
11 grams and services; and,

12 (d) That the establishment and funding of a joint underwrit-
13 ing association will make available medical professional
14 liability insurance to health care providers, thus preserving
15 public health programs and services for the citizens of this state.

§33-20E-3. Intent and purpose.

1 The purpose of this article is to create a mechanism to
2 provide medical professional liability insurance to health care
3 providers who are unable to secure such coverage at approved
4 rates through the voluntary market, in order to preserve public
5 health programs and services for the citizens of this state.

§33-20E-4. Definitions.

1 As used in this article, the following terms have the
2 meanings set forth below:

3 (a) "Association" means the joint underwriting association
4 created by this article.

5 (b) "Board" means the board of directors established
6 pursuant to section six of this article.

7 (c) "Commissioner" means the insurance commissioner of
8 West Virginia.

9 (d) "Health care provider" means a person, partnership,
10 corporation, facility or institution licensed by, or certified in,
11 this state or another state, to provide health care or professional
12 health care services, including, but not limited to, a physician,
13 osteopathic physician, hospital, dentist, registered or licensed
14 practical nurse, optometrist, podiatrist, chiropractor, physical
15 therapist, or psychologist.

16 (e) "Medical professional liability insurance", commonly
17 known as "medical malpractice insurance", means insurance

18 coverage for any claim for damage or loss against a health care
19 provider arising out of the death or injury of any person
20 proximately caused by negligence in the rendering, or the
21 failure to render, professional services by a health care pro-
22 vider.

23 (f) "Member insurer" means every insurer authorized to
24 write and engaged in writing, within this state, casualty
25 insurance, as defined in section ten, article one of this chapter.

26 (g) "Net direct written premiums" means, for purposes of
27 this article, direct gross premiums written in this state on
28 casualty insurance policies, less return premiums thereon, but
29 does not include premiums on contracts between insurers or
30 reinsurers.

31 (h) "State board" means the state board of risk and insur-
32 ance management.

§33-20E-5. Joint underwriting association.

1 (a) There is hereby created a nonprofit unincorporated legal
2 entity to be known as the West Virginia medical professional
3 liability insurance joint underwriting association composed of
4 member insurers. Every insurer authorized to write and engaged
5 in writing, within this state, casualty insurance, on a direct
6 basis, is and shall remain a member insurer, as a condition of its
7 authority to transact insurance in this state.

8 (b) Each member insurer shall participate in the association
9 in the proportion that its net direct written premiums during the
10 preceding calendar year, as reported in the annual statements
11 and other reports filed by the member with the commissioner,
12 bear to the aggregate net direct premiums written in this state
13 by all members of the association.

14 (c) The association shall perform its functions under a plan
15 of operation approved by the commissioner under section nine
16 of this article.

§33-20E-6. Board of directors.

1 (a) The administrative powers of the association shall be
2 vested in a board of directors, which shall consist of nine
3 persons serving terms established in the plan of operation.
4 Seven of the board members shall be representatives of the
5 member insurers and shall be appointed by the commissioner,
6 with consideration given to whether all member insurers are
7 fairly represented. One member shall be a health care provider,
8 and another shall be a citizen, both appointed by the governor
9 with the advice and consent of the Senate.

10 (b) The citizen and health care provider members of the
11 board shall receive the same compensation authorized by law
12 for members of the Legislature for their interim duties for each
13 day, or portion thereof, the member is engaged in the discharge
14 of official duties. All board members shall be reimbursed for
15 their actual and necessary expenses incurred in the discharge of
16 official duties, except that mileage shall be reimbursed at the
17 same rate as that authorized for members of the Legislature. All
18 payments for compensation and expenses shall be made from
19 the assets of the association.

§33-20E-7. Association's powers and duties.

1 (a) The association has, for purposes of this article and to
2 the extent approved by the commissioner, the general powers
3 and authority granted under the laws of this state to insurers
4 licensed to transact insurance as defined in article one, chapter
5 thirty-three of this code.

6 (b) The association may take any necessary action to make
7 medical professional liability insurance available including, but
8 not limited to:

9 (1) Assessing member insurers amounts necessary to pay
10 the obligations of the association, administration expenses, the
11 cost of examinations and other expenses authorized under this
12 article.

13 (2) Establishing underwriting standards and criteria.

14 (3) Requiring an eligible health care provider to purchase
15 an extended reporting endorsement, if available, from his or her
16 previous primary medical professional liability carrier with
17 respect to claims arising during previous policy periods.

18 (4) Entering into such contracts as are necessary or proper
19 to carry out the provisions and purposes of this article, includ-
20 ing contracts authorizing competent third parties with experi-
21 ence with joint underwriting associations or the medical
22 professional liability line of insurance to administer the plan of
23 operation, issue policies, oversee risk management, oversee
24 investment management, set rates, underwrite risk or process
25 claims or any combination thereof. Any such third-party
26 contract must be approved by the commissioner. The provisions
27 of article three, chapter five-a of this code, relating to purchas-
28 ing procedures, do not apply to any contracts or agreements
29 executed by or on behalf of the association under this subsec-
30 tion.

31 (5) Suing, including taking legal action necessary to recover
32 any assessments for, on behalf of, or against member insurers.

33 (6) Investigating claims brought against the association and
34 adjusting, compromising, defending, settling, and paying
35 covered claims, to the extent of the association's obligation, and
36 denying all other claims.

37 (7) Classifying risks as may be applicable and equitable.

38 (8) Establishing actuarially sound rates, rate classifications
39 and rating adjustments, subject to approval by the commis-
40 sioner.

41 (9) Purchasing reinsurance in an amount as it may from
42 time to time consider appropriate.

43 (10) Issuing and marketing policies of insurance providing
44 coverage required by this article in its own name.

45 (11) Investing, reinvesting and administering all funds and
46 moneys held by the association.

47 (12) Establishing accounts and funds, including a reserve
48 fund, to effectuate the purposes of this article.

49 (13) Developing, effectuating and promulgating any loss
50 prevention programs aimed at the best interests of the associa-
51 tion and the insured public.

§33-20E-8. State board of risk and insurance management to exercise board of directors' powers temporarily; interim plan of operation.

1 (a) Prior to the commissioner's approval of the final plan of
2 operation in accordance with section nine of this article, the
3 administrative powers of the association will be exercised by
4 the state board of risk and insurance management.

5 (b) The state board shall submit to the commissioner an
6 interim plan of operation consistent with the provisions of this
7 article, to become effective and operative upon approval in
8 writing by the commissioner.

9 (c) If the state board fails to submit a suitable interim plan
10 of operation within thirty days, the commissioner shall adopt an

11 interim plan which shall continue in force until superceded by
12 a final plan of operation, submitted by the board and approved
13 by the commissioner in accordance with section nine of this
14 article.

15 (d) The interim plan of operation shall provide for eco-
16 nomic, fair, and nondiscriminatory administration and for the
17 prompt and efficient provision of professional liability insur-
18 ance, and shall:

19 (1) Establish actuarially sound rates and premiums;

20 (2) Establish procedures for handling assets of the associa-
21 tion;

22 (3) Establish procedures by which claims may be filed with
23 the association and acceptable forms for filing claims;

24 (4) Establish procedures for records to be kept of all
25 financial transactions of the association;

26 (5) Establish a procedure by which any member insurer or
27 policyholder aggrieved by a final action or decision of the state
28 board or the board of directors may appeal to the commissioner
29 within thirty days after the action or decision; and,

30 (6) Contain additional provisions necessary or proper for
31 the execution of the powers and duties of the association.

32 (e) The interim plan may also provide for:

33 (1) Assessments of members to defray losses and expenses;

34 (2) Creation and administration of a reserve fund;

35 (3) Commission arrangements;

36 (4) Reasonable and objective underwriting standards; and

37 (5) Purchase and cession of reinsurance.

38 (f) A health care provider is not eligible to obtain coverage
39 under the interim plan if he or she refuses, on a regular basis, to
40 accept patients solely because their health care coverage is
41 provided pursuant to the West Virginia public employees
42 insurance act, the West Virginia children's health program,
43 West Virginia medicaid, or the West Virginia workers' com-
44 pensation fund.

45 (g) All member insurers shall comply with the interim plan
46 of operation.

§33-20E-9. Final plan of operation.

1 (a) Once the commissioner has approved the selection of
2 the initial board members, the board shall, within thirty days,
3 submit to the commissioner a final plan of operation consistent
4 with the provisions of this article.

5 (b) If the board fails to submit a suitable final plan of
6 operation within the time provided in subsection (a) of this
7 section, the commissioner shall adopt a final plan of operation
8 as necessary or advisable to effectuate the provisions of this
9 article.

10 (c) The board shall not assume administrative control of the
11 association until the commissioner approves the final plan of
12 operation.

13 (d) In addition to the matters specified in subsection (d) of
14 section eight of this article to be included in the interim plan of
15 operation, the final plan of operation shall:

16 (1) Establish procedures for the transfer of all assets and
17 liabilities of the association from the state board to the board of
18 directors created by section six of this article.

19 (2) Establish the terms of office of the board of directors.

20 (3) Establish regular places and times for meetings of the
21 board of directors.

22 (4) Establish procedures for records to be kept of all
23 financial transactions of the association, its agents, and the
24 board.

25 (5) Establish procedures for assessments of member
26 insurers to defray losses and expenses;

27 (6) Establish reasonable and objective underwriting
28 standards;

29 (7) Establish actuarially sound rates and premiums;

30 (8) Contain such additional provisions as are necessary or
31 proper for the execution of the powers and duties of the
32 association.

33 (d) All member insurers shall comply with the final plan of
34 operation.

35 (e) Amendments to the plan of operation may be made by
36 the commissioner or by the board of directors with the approval
37 of the commissioner.

§33-20E-10. Duties and powers of commissioner.

1 (a) The commissioner shall, upon request of the board,
2 provide the association with a statement of the net direct written
3 premiums of each member insurer.

4 (b) The commissioner may suspend or revoke, after notice
5 and hearing, the certificate of authority to transact insurance in
6 this state of any member insurer which fails to comply with the
7 plan of operation or fails to pay an assessment when due.

8 (c) Any final order of the commissioner under this article
9 shall be subject to judicial review as provided by section
10 fourteen, article two of this chapter.

§33-20E-11. Eligibility for coverage.

1 (a) Only those health care providers who are unable to
2 obtain medical professional liability insurance because it is not
3 available through the voluntary insurance market from insurers
4 licensed to transact insurance in West Virginia at rates ap-
5 proved by the commissioner are eligible to obtain coverage
6 through the association. *Provided, That* any health care provider
7 who can obtain medical professional liability insurance only
8 pursuant to a "consent to" or "guide A" rate agreement will
9 remain eligible to obtain coverage through the association. Any
10 health care provider who has medical professional liability
11 insurance pursuant to article twelve of chapter twenty-nine of
12 this code is not eligible to obtain insurance through the associa-
13 tion.

14 (b) The commissioner shall designate, based upon market
15 conditions, the categories of health care providers who are
16 eligible to obtain coverage from the association.

§33-20E-12. Issuance of policy.

1 (a) If an eligible applicant meets the underwriting standards
2 and other requirements and conditions of the association as set
3 forth in the approved plan of operation and there is no unpaid,
4 uncontested premium, charge or assessment due from the
5 applicant for any prior insurance of the same kind, the associa-
6 tion, upon receipt of the premium, charge or assessment or a
7 portion thereof as prescribed by the plan of operation, shall
8 cause to be issued a policy of medical professional liability
9 insurance.

10 (b) The policy may not require as a condition precedent to
11 settlement or compromise of any claim the consent or acquies-
12 cence of the policyholder.

§33-20E-13. Rates; initial filing; basis for rates and premiums.

1 (a) The rates, rating plans, rating rules and rating classifica-
2 tions applicable to insurance written by the association are
3 subject to the provisions of article twenty-b of this chapter.
4 Policy forms applicable to insurance written by the association
5 must conform to the requirements of the provisions of section
6 eight, article six of this chapter.

7 (b) Within such time as the commissioner shall direct, the
8 association shall submit an initial filing, in proper form, of
9 policy forms, classifications, rates, rating plans, and rating rules
10 applicable to medical professional liability insurance. Rates
11 approved by the state board pursuant to section eight of this
12 article shall remain in effect until the association's initial filing
13 is approved.

14 (c) In the event the commissioner disapproves the initial
15 filing, in whole or in part, the association shall amend the filing,
16 in whole or in part, in accordance with the direction of the
17 commissioner.

18 (d) Initial rates and premiums are to be set in consideration
19 of the past and prospective loss and expense experience for
20 insurers writing medical professional liability insurance within
21 this state.

22 (e) After the initial year of operation, the board shall obtain
23 and implement, at least annually, from an independent outside
24 source, such as a medical liability actuary or a rating organiza-
25 tion experienced with the medical liability line of insurance,
26 written rating plans upon which premiums shall be based. The

27 resultant premium rates must be arrived at on an actuarially
28 sound basis and must be calculated to be self-supporting.

29 (f) The rates and premiums charged for insurance policies
30 issued pursuant to this article shall not be deemed excessive
31 because they contain an amount reasonably calculated to recoup
32 a deficit of the association pursuant to section sixteen of this
33 article.

§33-20E-14. The Medical Professional Liability Insurance Fund; capitalization; transfer of assets and liabilities to board of directors.

1 (a) There is hereby established a special revenue fund, to be
2 known as the "medical professional liability insurance fund,"
3 into which any initial capital, surplus or premiums or assess-
4 ments charged and collected by the state board under the
5 provisions of the interim plan shall be deposited.

6 (b) A portion of the association's initial capital and surplus
7 may be provided by the Legislature, in an amount, upon terms
8 and conditions, and from sources as may be determined by the
9 Legislature in its sole discretion.

10 (c) Upon approval of the final plan of operation by the
11 commissioner, the state board shall transfer the assets and
12 liabilities of the association to the board of directors.

§33-20E-15. Deposit of funds; investments; premium tax liability; state not responsible for liabilities or expenses of association.

1 (a) The board shall deposit all sums transferred from the
2 state board into an account of the association as specified in the
3 final plan of operation.

4 (b) The board may invest sums from the association's
5 account. Any interest earned on investments or any profit
6 generated by collection of premiums or other means shall be
7 returned to the association's account for the purpose of imple-
8 menting this article.

9 (c) The association is liable for premium taxes to the same
10 extent and in the same manner as a licensed insurer engaged in
11 transacting insurance in this state.

12 (d) The State is not responsible for any costs, expenses,
13 liabilities, judgments, or other obligations of the association.

§33-20E-16. Deficit; recoupment; assessments; reimbursement of members.

1 (a) A deficit sustained by the association in any one
2 calendar year may be recouped, pursuant to the plan of opera-
3 tion then in effect, by one or more of the following procedures:

4 (1) A contribution from a reserve fund, if any, until the
5 same is exhausted;

6 (2) An assessment upon the member insurers;

7 (3) A prospective rate increase.

8 (b) In the event the board opts to assess the member
9 insurers, each member shall be responsible for the proportion
10 of the deficit its net direct written premiums for the preceding
11 year bear to the aggregate net direct premiums written by all
12 members in the preceding calendar year. Net direct written
13 premiums subject to the provisions of article twenty-a of this
14 chapter shall not be considered in determining a member
15 insurer's proportional share of the deficit. A member insurer
16 may not be assessed in any year an amount greater than two

17 percent of its net direct written premiums for the preceding
18 calendar year.

19 (c) The assessment of a member insurer may be ordered
20 deferred, in whole or in part, upon application by the insurer if
21 the commissioner determines that payment of the assessment
22 may render the insurer insolvent or in danger of insolvency or
23 otherwise seriously impair the financial stability of the member
24 insurer.

25 (d) After the deficit which necessitated the assessment has
26 been recouped, each member insurer shall be entitled to
27 reimbursement of any assessment through a credit against the
28 premium taxes imposed by sections fourteen and fourteen-a,
29 article three of this chapter, in equal amounts per year for three
30 successive years following the assessment. At the option of the
31 member insurer, the premium tax credit may be taken over an
32 additional number of years. The tax credit established under this
33 subsection shall be applicable only to general revenue funds.

34 (e) A member insurer may not impose a policy surcharge
35 on any policyholder of the member insurer for any assessment
36 paid by the member insurer pursuant to subsection (b) of this
37 section or otherwise refer to the assessment paid by the member
38 insurer in any billing statement or notice provided to any
39 policyholder of the member insurer. Nothing in this section
40 shall prohibit a member insurer from treating any assessment
41 payments as an expense of the member insurer for all purposes.

§33-20E-17. Commissioner to report to board termination of authority to transact insurance.

1 If the authority of a member to transact insurance in this
2 State terminates for any reason, the commissioner shall notify
3 the board.

§33-20E-18. Examination of association.

1 The association shall be subject to examination and
2 regulation by the commissioner.

§33-20E-19. Annual statements.

1 The association shall file in the office of the commissioner,
2 on or before the thirtieth day of March of each year, a statement
3 containing information with respect to its transactions, condi-
4 tion, operations, and affairs during the preceding calendar year.
5 The commissioner shall prescribe the matters and information
6 to be contained in and the form of the annual statement. The
7 commissioner may, at any time, require the association to
8 furnish additional information with respect to its transactions,
9 condition, or any matter connected therewith considered to be
10 material and of assistance in evaluating the scope, operation,
11 and experience of the association.

§33-20E-20. Immunity.

1 There shall be no liability on the part of and no cause of
2 action of any nature shall arise against any member insurer, the
3 association, the board, the commissioner or their agents or
4 employees for any action taken by them in the exercise and
5 performance of their powers and duties under this article or for
6 any statements made in good faith by them in any reports or
7 communications, concerning risks insured or to be insured by
8 the association, or at any administrative hearings conducted in
9 connection therewith.

§33-20E-21. Operative date.

1 The provisions of this article may only become operable
2 upon the passage of a resolution by the Legislature. Any
3 policies written under this article may have an effective date
4 retroactive to the operative date.

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-1. Short title.

1 This article shall be known and may be cited as the
2 "Physicians' Mutual Insurance Company Act."

§33-20F-2. Findings and purpose.

1 (a) The Legislature finds that:

2 (1) There is a nationwide crisis in the field of medical
3 liability insurance;

4 (2) Similar crises have occurred at least three times during
5 the past three decades;

6 (3) Physicians in West Virginia find it increasingly diffi-
7 cult, if not impossible, to obtain medical liability insurance
8 either because coverage is unavailable or unaffordable;

9 (4) The difficulty or impossibility in obtaining medical
10 liability insurance may result in many qualified physicians
11 leaving the state;

12 (5) Access to health care is of utmost importance to the
13 citizens of West Virginia;

14 (6) A mechanism is needed to remedy this recurring
15 medical liability crisis; and

16 (7) A physicians' mutual insurance company or a similar
17 entity has proven to be a successful mechanism in other states
18 for helping physicians secure insurance and for stabilizing the
19 insurance market.

20 (b) The purpose of this article is to create a mechanism for
21 the formation of a physicians' mutual insurance company that
22 will provide:

23 (1) A means for physicians to obtain medical professional
24 liability insurance that is available and affordable; and

25 (2) Compensation to persons who suffer injuries as a result
26 of medical professional liability as defined in subsection (d),
27 section two, article seven-b, chapter fifty-five of this code.

§33-20F-3. Definitions.

1 For purposes of this article, the term:

2 (a) "Board of medicine" means the West Virginia board of
3 medicine as provided in section five, article three, chapter thirty
4 of this code.

5 (b) "Board of osteopathy" means the West Virginia board
6 of osteopathy as provided in section three, article fourteen,
7 chapter thirty of this code.

8 (c) "Commissioner" means the insurance commissioner of
9 West Virginia as provided in section one, article two, chapter
10 thirty-three of this code.

11 (d) "Company" means any physicians' mutual insurance
12 company created pursuant to the terms of this article.

13 (e) "Physician" means an individual who is licensed by the
14 board of medicine or the board of osteopathy to practice
15 medicine or podiatry in West Virginia.

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

1 (a) Subject to the provisions of this article, a company is
2 hereby authorized to be created as a domestic, private,
3 nonstock, nonprofit corporation. As an incentive for its cre-
4 ation, any company that meets the requirements set forth in this
5 article may be eligible for funds from the Legislature in
6 accordance with the provisions of section seven of this article.
7 A company must remain for the duration of its existence a
8 domestic mutual insurance company owned by its policyholders
9 and may not be converted into a stock corporation, a for-profit
10 corporation or any other entity not owned by its policyholders.

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

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

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

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

1 (a) A company is to be governed by a board of directors
2 consisting of eleven directors, as follows:

3 (1) At least, but not more than, four directors who are
4 physicians licensed by the board of medicine or the board of

5 osteopathy and who represent the various physician organiza-
6 tions within the state;

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

9 (3) At least two directors who are officers and employees
10 of the company and are responsible for the daily management
11 of the company; and

12 (4) Two directors with general knowledge and experience
13 in business management.

14 (b) In addition to the eleven directors required by subsec-
15 tion (a) of this section, the by-laws of a company may provide
16 for the addition of at least two directors who represent an entity
17 or institution which lends or otherwise provides funds to the
18 company.

19 (c) Relating to the directors provided for in subsection (a)
20 of this section and to the extent possible, the directors are to
21 reside in different geographical areas of the state. The number
22 of such directors from any one congressional district in the state
23 may not exceed the number of directors from any other con-
24 gressional district in the state by more than two.

25 (d) The directors and officers of a company are to be
26 chosen in accordance with the articles of incorporation and
27 bylaws of the company. The initial directors shall serve for the
28 following terms: (1) Three for four year terms; (2) three for
29 three year terms; (3) three for two year terms; and (4) two for
30 one year terms. Thereafter, the directors shall serve staggered
31 terms of four years. If additional directors are added to the
32 board as provided in subsection (b) of this section, the initial
33 term for those directors is four years. No director chosen
34 pursuant to subsection (a) of this section may serve more than
35 two consecutive terms.

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

§33-20F-6. Management and administration of a company.

1 (a) If the board of directors determines that the affairs of a
2 company may be administered suitably and efficiently, the
3 company may enter into a contract with a licensed insurer,
4 licensed health service plan, insurance service organization,
5 third party administrator, insurance brokerage firm or other firm
6 or company with suitable qualifications and experience to
7 administer some or all of the affairs of the company, subject to
8 the continuing direction of the board of directors as required by
9 the articles of incorporation and bylaws of the company, and
10 the contract.

11 (b) The company shall file a true copy of the contract with
12 the commissioner as provided in section twenty-one, article five
13 of this chapter.

§33-20F-7. Initial capital and surplus; special assessment.

1 (a) A portion of the initial capital and surplus of a company
2 may be provided by direction of the Legislature, in an amount,
3 upon terms and conditions, and from sources as may deter-
4 mined by the Legislature in its sole discretion.

5 (b) In the event that a portion of the initial capital and
6 surplus of a company is provided by direction of the Legislature
7 pursuant to subsection (a) of this section, a special one time
8 assessment for the privilege of practicing in West Virginia may
9 be assessed on every physician licensed by the board of
10 medicine and every physician licensed by the board of osteopa-
11 thy to practice medicine in this state. The executive director of
12 the medical licensing board shall establish the amount of the

13 assessment, in consultation with the board of directors of the
14 company or their designee. The amount of the assessment may
15 not exceed one thousand dollars. The assessment is to be
16 assessed and collected by the board of medicine and the board
17 of osteopathy, on forms as the board of medicine and the board
18 of osteopathy may prescribe.

19 (c) If the special assessment is collected pursuant to
20 subsection (b) of this section, the Legislature hereby dedicates
21 the entire proceeds of the special assessment to the company.
22 The board of medicine and the board of osteopathy shall
23 promptly pay over to the company all amounts collected
24 pursuant to this section.

§33-20F-8. Application for license; authority of commissioner.

1 (a) As soon as practical, a company desiring to do business
2 pursuant to the provisions of this article shall file its corporate
3 charter and by-laws with the commissioner and apply for a
4 license to transact insurance in this state. Notwithstanding any
5 other provision of this code, the commissioner must act on the
6 documents within fifteen days of the filing by a company.

7 (b) In recognition of the medical liability insurance crisis in
8 this state at the time of enactment of this article, and the critical
9 need to expedite the initial operation of a company, the Legisla-
10 ture hereby authorizes the commissioner to review the docu-
11 mentation submitted by a company and to determine the initial
12 capital and surplus requirements of a company, notwithstanding
13 the provisions of section five-b, article three of this chapter.
14 The commissioner has the sole discretion to determine the
15 capital and surplus funds of a company and to monitor the
16 economic viability of the company during its initial operation
17 and duration on not less than a monthly basis. A company shall
18 furnish the commissioner with all information and cooperate in
19 all respects as may be necessary for the commissioner to

20 perform the duties set forth in this section and in other provi-
21 sions of this chapter.

22 (c) Subject to the provisions of subsection (d) of this
23 section, the commissioner may waive other requirements
24 imposed on mutual insurance companies by the provisions of
25 this chapter as the commissioner determines is necessary to
26 enable a company to begin insuring physicians in this state at
27 the earliest possible date.

28 (d) Within thirty-six months of the date of the issuance of
29 its license to transact insurance, a company must comply with
30 the capital and surplus requirements set forth in section five-b,
31 article three of this chapter and with all other requirements
32 imposed upon mutual insurance companies by the provisions of
33 this chapter.

§33-20F-9. Kinds of coverage authorized; transfer of policies from the state board of risk and insurance management; risk management practices authorized.

1 (a) Upon approval by the commissioner for a license to
2 transact insurance in this state, a company may issue
3 nonassessable policies of malpractice insurance, as defined in
4 subdivision (9), subsection (e), section ten, article one of this
5 chapter, insuring a physician. Additionally, a company may
6 issue other types of casualty or liability insurance as may
7 approved by the commissioner.

8 (b) A company must accept the transfer of medical mal-
9 practice insurance obligations and risks of existing or in force
10 contracts of insurance on physicians from the state board of risk
11 and insurance. Subject to approval by the commissioner, a
12 company may impose reasonable terms and conditions upon
13 any transfer from the state board of risk and insurance manage-
14 ment, but the terms and conditions may not be designed or
15 construed to prohibit or unduly restrict such transfers.

16 (c) A company shall make policies of insurance available
17 to physicians in this state, regardless of practice type or
18 specialty. Policies issued by a company to each class of
19 physicians are to be essentially uniform in terms and conditions
20 of coverage.

21 (d) Notwithstanding the provisions of subsections (b) or (c)
22 of this section, a company may:

23 (1) Establish reasonable classifications of physicians,
24 insured activities, and exposures based on a good faith determi-
25 nation of relative exposures and hazards among classifications;

26 (2) Vary the limits, coverages, exclusions, conditions, and
27 loss-sharing provisions among classifications;

28 (3) Establish, for an individual physician within a classifi-
29 cation, reasonable variations in the terms of coverage, including
30 rates, deductibles and loss-sharing provisions, based on the
31 insured's prior loss experience and current professional training
32 and capability; and

33 (4) Refuse to provide insurance coverage for individual
34 physicians whose prior loss experience or current professional
35 training and capability are such that the physician represents an
36 unacceptable risk of loss if coverage is provided.

37 (e) A company shall establish reasonable risk management
38 and continuing education requirements which policyholders
39 must meet in order to be and remain eligible for coverage.

§33-20F-10. Controlling law.

1 To the extent applicable, and when not in conflict with the
2 provisions of this article, the provisions of chapters thirty-one
3 and thirty-three of this code apply to any company created
4 pursuant to the provisions of this article. If a provision of this

5 article and another provision of this code are in conflict, the
6 provision of this article controls.

§33-20F-11. Liberal construction.

1 This article is enacted to address a situation critical to the
2 citizens of the State of West Virginia by providing a mechanism
3 for the speedy and deliberate creation of a company to begin
4 offering medical liability insurance to physicians in this state at
5 the earliest possible date, and to accomplish this purpose, this
6 article must be liberally construed.

§33-20F-12. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance is held invalid, such invalidity may
3 not affect other provisions or applications of this article and to
4 this end, the provisions of this article are declared to be
5 severable.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated; limitation on bad faith claims; filing of first party bad faith claims.

1 (a) In any medical professional liability action against a
2 health care provider, no specific dollar amount or figure may be
3 included in the complaint, but the complaint may include a
4 statement reciting that the minimum jurisdictional amount
5 established for filing the action is satisfied. However, any party
6 defendant may at any time request a written statement setting
7 forth the nature and amount of damages being sought. The
8 request shall be served upon the plaintiff who shall serve a

9 responsive statement as to the damages sought within thirty
10 days thereafter. If no response is served within the thirty days,
11 the party defendant requesting the statement may petition the
12 court in which the action is pending to order the plaintiff to
13 serve a responsive statement.

14 (b) Notwithstanding any other provision of law, absent
15 privity of contract, no plaintiff who files a medical professional
16 liability action against a health care provider may file an
17 independent cause of action against any insurer of the health
18 care provider alleging the insurer has violated the provisions of
19 subdivision (9), section four, article eleven, chapter thirty-three
20 of this code. Insofar as the provisions of section three, article
21 eleven, chapter thirty-three of this code prohibit the conduct
22 defined in subdivision (9), section four, article eleven, chapter
23 thirty-three of this code, no plaintiff who files a medical
24 professional liability action against a health care provider may
25 file an independent cause of action against any insurer of the
26 health care provider alleging the insurer has violated the
27 provisions of said section three.

28 (c) No health care provider may file a cause of action
29 against his or her insurer alleging the insurer has violated the
30 provisions of subdivision (9), section four, article eleven,
31 chapter thirty-three of this code until the jury has rendered a
32 verdict in the underlying medical professional liability action or
33 the case has otherwise been dismissed, resolved or disposed of.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

1 (a) Notwithstanding any other provision of this code, no
2 person may file a medical professional liability action against
3 any health-care provider without complying with the provisions
4 of this section.

5 (b) At least thirty days prior to the filing of a medical
6 professional liability action against a health-care provider, the
7 claimant shall serve by certified mail, return receipt requested,
8 a notice of claim. The notice of claim shall include a statement
9 of the theory or theories of liability upon which a cause of
10 action may be based, together with a screening certificate of
11 merit. The certificate of merit shall be executed under oath by
12 a health care provider qualified as an expert under the West
13 Virginia rules of evidence and shall state with particularity: (1)
14 the expert's familiarity with the applicable standard of care in
15 issue; (2) the expert's qualifications; (3) the expert's opinion as
16 to how the applicable standard of care was breached; and (4) the
17 expert's opinion as to how the breach of the applicable standard
18 of care resulted in injury or death. A separate screening
19 certificate of merit must be provided for each health care
20 provider against whom a claim is asserted. The person signing
21 the screening certificate shall have no financial interest in the
22 underlying claim, but may participate as an expert witness in
23 any judicial proceeding. Nothing in this subsection may be
24 construed to limit the application of rule fifteen of the rules of
25 civil procedure.

26 (c) Notwithstanding any provision of this code, if a claim-
27 ant or if represented by counsel, the claimant's counsel,
28 believes that no screening certificate of merit is necessary
29 because the cause of action is based upon a well-established
30 legal theory of liability which does not require expert testimony
31 supporting a breach of the applicable standard of care, the
32 claimant or if represented by counsel, the claimant's counsel,
33 shall file a statement specifically setting forth the basis of the
34 alleged liability of the health care provider in lieu of a screening
35 certificate of merit.

36 (d) If a claimant or his or her counsel has insufficient time
37 to obtain a screening certificate of merit prior to the expiration
38 of the applicable statute of limitations, the claimant shall

39 comply with the provisions of subsection (b) of this section
40 except that the claimant or his or her counsel shall furnish the
41 health care provider with a statement of intent to provide a
42 screening certificate of merit within sixty days of the date the
43 health care provider receives the notice of claim.

44 (e) Any health care provider who receives a notice of claim
45 pursuant to the provisions of this section must respond, in
46 writing, to the claimant within thirty days of receipt of the
47 claim or within thirty days of receipt of the certificate of merit
48 if the claimant is proceeding pursuant to the provisions of
49 subsection (d) of this section.

50 (f) Upon receipt of the notice of claim or of the screening
51 certificate, if the claimant is proceeding pursuant to the
52 provisions of subsection (d) of this section, the health care
53 provider is entitled to pre-litigation mediation before a qualified
54 mediator upon written demand to the claimant.

55 (g) If the health care provider demands mediation pursuant
56 to the provisions of subsection (f) of this section, the mediation
57 shall be concluded within forty-five days of the date of the
58 written demand. The mediation shall otherwise be conducted
59 pursuant to rule 25 of the trial court rules, unless portions of the
60 rule are clearly not applicable to a mediation conducted prior to
61 the filing of a complaint or unless the supreme court of appeals
62 promulgates rules governing mediation prior to the filing of a
63 complaint. If mediation is conducted, the claimant may depose
64 the health-care provider before mediation or take the testimony
65 of the health-care provider during the mediation.

66 (h) The failure of a health care provider to timely respond
67 to a notice of claim, in the absence of good cause shown,
68 constitutes a waiver of the right to request pre-litigation
69 mediation. Except as otherwise provided in this subsection, any
70 statute of limitations applicable to a cause of action against a

71 health care provider upon whom notice was served for alleged
72 medical professional liability shall be tolled from the date of the
73 mailing of a notice of claim to thirty days following receipt of
74 a response to the notice of claim, thirty days from the date a
75 response to the notice of claim would be due, or thirty days
76 from the receipt by the claimant of written notice from the
77 mediator that the mediation has not resulted in a settlement of
78 the alleged claim and that mediation is concluded, whichever
79 last occurs. If a claimant has sent a notice of claim relating to
80 any injury or death to more than one health care provider, any
81 one of whom has demanded mediation, then the statute of
82 limitations shall be tolled with respect to, and only with respect
83 to, those health care providers to whom the claimant sent a
84 notice of claim to thirty days from the receipt of the claimant of
85 written notice from the mediator that the mediation has not
86 resulted in a settlement of the alleged claim and that mediation
87 is concluded.

88 (i) Notwithstanding any other provision of this code, a
89 notice of claim, a health care provider's response to any notice
90 claim, a certificate of merit and the results of any mediation
91 conducted pursuant to the provisions of this section are confi-
92 dential and are not admissible as evidence in any court proceed-
93 ing unless the court, upon hearing, determines that failure to
94 disclose the contents would cause a miscarriage of justice.

§55-7B-6a. Access to medical records.

1 (a) Within thirty days of the filing of an answer by a
2 defendant in a medical professional liability action or, if there
3 are multiple defendants, within thirty days following the filing
4 of the last answer, the plaintiff shall provide each defendant and
5 each defendant shall provide the plaintiff with access, as if a
6 request had been made for production of documents pursuant to
7 rule 34 of the rules of civil procedure, to all medical records
8 pertaining to the alleged act or acts of medical professional

9 liability which: (1) Are reasonably related to the plaintiff's
10 claim; and (2) are in the party's control. The plaintiff shall also
11 provide releases for such other medical records known to the
12 plaintiff but not under his or her control but which relate to the
13 plaintiff's claim. If the action is one alleging wrongful death,
14 the records shall be for the deceased except inasmuch as the
15 plaintiff alleges injury to himself or herself.

16 (b) Upon receipt and review of the records referred to in
17 subsection (a) of this section, any party may make a written
18 request to any other party for medical records of the plaintiff or
19 the deceased related to his or her medical care and which are
20 reasonably related to the plaintiff's claim. Such request shall be
21 specific as to the type of record requested and shall be accom-
22 panied by a brief statement as to why its disclosure would be
23 relevant to preparation of a claim or of a defense. The party
24 receiving the request shall provide access to any such records
25 under his or her control or a release for medical records for such
26 records not under his or her control unless the party receiving
27 the request believes that the records requested are not reason-
28 ably related to the claim.

29 (c) If a party receives a request for existing records he or
30 she believes are not reasonably related to the claim, he or she
31 shall provide written notice to the requesting party of the
32 existence of such records and schedule a hearing before the
33 court to determine whether access should be provided.

34 (d) If a party has reasonable cause to believe that medical
35 records reasonably related to the claim of medical negligence
36 exist and access have not been provided or a release has not
37 been provided therefor, he or she shall give written notice
38 thereof to the party upon whom the request is made, and if said
39 records are not received within fourteen days of the written
40 notice, obtain a hearing on the matter before the court.

41 (e) In the event a hearing is required pursuant to the
42 provisions of subsection (c) or (d) of this section, the court at
43 the conclusion thereof shall make a finding as to the reasonable-
44 ness of the parties' request for or refusal to provide records and
45 may assess costs pursuant to the rules of civil procedure.

§55-7B-6b. Expedited resolution of cases against health care providers; time frames.

1 (a) In each professional liability action filed against a health
2 care provider, the court shall convene a mandatory status
3 conference within sixty days after the appearance of the
4 defendant. It shall be the duty of the defendant to schedule the
5 conference with the court upon proper notice to the plaintiff.

6 (b) During the status conference the parties shall inform the
7 court as to the status of the action, the identification of con-
8 tested facts and issues, the progress of discovery and the time
9 necessary to complete discovery. The plaintiff shall advise the
10 court whether the plaintiff intends to proceed without an expert,
11 whether the expert who signed the screening certificate of merit
12 will testify upon trial or whether additional experts will be
13 offered by plaintiff. The court shall determine whether the
14 plaintiff may proceed without an expert or otherwise establish
15 dates for the disclosure of expert witnesses by both the plaintiff
16 and all defendants. The court shall also order the parties to
17 participate in mandatory mediation. The mediation shall be
18 conducted pursuant to the provisions of trial court rule 25.

19 (c) Absent an order expressly setting forth reasons why the
20 interests of justice would otherwise be served, the court shall
21 enter a scheduling order which sets a trial date within twenty-
22 four months from the date the defendant made an appearance,
23 or if there is more than one defendant, twenty-four months from
24 the date the last defendant makes an appearance in the proceed-

25 ing. The trial date shall be adhered to unless, for good cause
26 shown, the court enters an order continuing the trial date.

27 (d) The court may order a summary jury trial of the case if
28 all parties represent a case is ready for trial and jointly move the
29 court for a summary jury trial, as provided in section six-c of
30 this section.

31 (e) Counsel and parties are subject to sanctions for failures
32 and lack of preparation specified in rule 16(f) of the rules of
33 civil procedure respecting pretrial conferences or orders and are
34 subject to the payment of reasonable expenses, including
35 attorneys fees, for failure to participate in good faith in the
36 development and submission of a proposed discovery plan as
37 required by the rules of civil procedure.

38 (f) In the event that the court determines prior to trial that
39 either party is presenting or relying upon a frivolous or dilatory
40 claim or defense, for which there is no reasonable basis in fact
41 or at law, the court may direct in any final judgment the
42 payment to the prevailing party of reasonable litigation ex-
43 penses, including deposition and subpoena expenses, travel
44 expenses incurred by the party, and such other expenses
45 necessary to the maintenance of the action, excluding attorney's
46 fees and expenses.

§55-7B-6c. Summary jury trial.

1 (a) The court must determine the date of the summary jury
2 trial, the length of presentations by counsel, and the length of
3 deliberations by the jury, so that the proceeding can be com-
4 pleted in no more than one day.

5 (b) Unless the court orders otherwise, the parties or
6 representatives of the parties must be present at the summary
7 jury trial.

8 (c) The trial shall be conducted before a six-member jury
9 selected from the regular jury panel. The court shall conduct a
10 brief voir dire of the panel, and each party may exercise two
11 challenges. No alternate jurors will be impaneled.

12 (d) All evidence shall be presented by the attorneys for the
13 parties. The attorneys may summarize, quote from, and
14 comment on pleadings, depositions, or other discovery requests
15 and responses, exhibits and statements of potential witnesses.
16 No potential testimony of a witness may be referred to unless
17 the reference is based on: (i) The product of discovery proce-
18 dures; (ii) a written sworn statement of the witness; or (iii) an
19 affidavit of counsel stating that although an affidavit of the
20 witness is not available and cannot be obtained by the exercise
21 of reasonable diligence, the witness would be called at trial and
22 counsel has been told the substance of the testimony of the
23 witness. The substance of the witness' testimony must also be
24 included in the affidavit of counsel.

25 (e) Unless the court orders otherwise, presentations shall be
26 limited to one hour for each party. In the case of multiple
27 parties represented by separate counsel, the court shall make a
28 reasonable adjustment of the time allowed.

29 (f) Opposing counsel may object during the course of a
30 presentation if the presentation violates the provisions of
31 subsection (d) of this section or goes beyond the limits of
32 propriety in statements as to evidence or other comments.

33 (g) Following the presentations by counsel, the court shall
34 give an abbreviated set of instructions to the jury on the
35 applicable law. The jury will be encouraged to return a verdict
36 that represents a unanimous verdict of the jurors. If after a
37 reasonable time a unanimous verdict is not possible, the jury
38 shall be directed to return a special verdict consisting of an
39 anonymous statement of each juror's finding on liability and

40 damages. Following the verdict, the court may invite, but may
41 not require, the jurors to informally discuss the case with the
42 attorneys and the parties.

43 (h) Unless the court orders otherwise, the proceedings will
44 not be recorded. However, a party may arrange for recording at
45 its own expense. Statements in briefs or summaries submitted
46 in connection with the summary jury trial and statements by
47 counsel at trial are not admissible in any evidentiary proceed-
48 ing. The summary jury trial verdict is not admissible in any
49 evidentiary proceeding.

50 (i) Within thirty days following the jury verdict, each party
51 must file a notice setting forth whether the party intends to
52 accept the summary jury trial verdict or whether the party
53 rejects the summary jury trial verdict and desires to proceed to
54 trial. If all parties accept the summary jury trial verdict, the
55 verdict will be deemed a final determination on the merits and
56 judgment may be entered on the verdict by the court. If a
57 verdict is rendered upon the subsequent trial of the case which
58 is not more than twenty percent more favorable to a party who
59 rejected the summary jury trial verdict and indicated a desire to
60 proceed to trial, the rejecting party is liable for the costs
61 incurred by the other party or parties subsequent to the sum-
62 mary jury trial, in a similar manner as is provided in rule 68(c)
63 of the rules of civil procedure when a claimant rejects an offer
64 of judgment, and is liable for attorneys' fees incurred after the
65 summary jury trial.

§55-7B-6d. Twelve-member jury trial.

1 Notwithstanding any other provision of this code, the jury
2 in any trial of an action for medical professional liability shall
3 consist of twelve members. The judge shall instruct the jury that
4 they should endeavor to reach a unanimous verdict but, if they
5 cannot reach a unanimous verdict, they may return a majority

6 verdict of nine of the twelve members of the jury. The judge
7 shall accept and record any verdict reached by nine members of
8 the jury. The verdict shall bear the signatures of all jurors who
9 have concurred in the verdict. The verdict shall be announced
10 in open court, either by the jury foreperson or by any of the
11 jurors concurring in the verdict. After a verdict has been
12 returned and before the jury has been discharged, the jury shall
13 be polled at the request of any party or upon the court's own
14 motion. The poll shall be conducted by the clerk of the court
15 asking each juror individually whether the verdict announced is
16 such juror's verdict. If, upon the poll, a majority of nine
17 members of the jury has not concurred in the verdict, the jury
18 may be directed to retire for further deliberations or the jury
19 may be discharged.

§55-7B-10. Effective date; applicability of provisions.

1 (a) The provisions of House Bill 149, enacted during the
2 first extraordinary session of the Legislature, 1986, shall be
3 effective at the same time that the provisions of Enrolled Senate
4 Bill 714, enacted during the Regular session, 1986, become
5 effective, and the provisions of said House Bill 149 shall be
6 deemed to amend the provisions of Enrolled Senate Bill 714.
7 The provisions of this article shall not apply to injuries which
8 occur before the effective date of this said Enrolled Senate Bill
9 714.

10 (b) The amendments to this article as provided in House
11 Bill 601, enacted during the sixth extraordinary session of the
12 Legislature, two thousand one, apply to all causes of action
13 alleging medical professional liability which are filed on or
14 after the first day of March, two thousand two.

§55-7B-11. Severability.

1 (a) If any provision of this article as enacted during the first
2 extraordinary session of the Legislature, 1986, in House Bill

3 149, or as enacted during the regular session of the Legislature,
4 1986, in Senate Bill 714, or the application thereof to any
5 person or circumstance is held invalid, such invalidity shall not
6 affect other provisions or applications of this article, and to this
7 end, the provisions of this article are declared to be severable.

8 (b) If any provision of the amendments to section five of
9 this article, any provision of new section six-d of this article or
10 any provision of the amendments to section eleven, article six,
11 chapter fifty-six of this code as provided in House Bill 601,
12 enacted during the sixth extraordinary session of the Legisla-
13 ture, two thousand one, is held invalid, or the application
14 thereof to any person is held invalid, then, notwithstanding any
15 other provision of law, every other provision of said House Bill
16 601 shall be deemed invalid and of no further force and effect.

17 (c) If any provision of the amendments to sections six or ten
18 of this article or any provision of new sections six-a, six-b or
19 six-c of this article as provided in House Bill 601, enacted
20 during the sixth extraordinary session of the Legislature, two
21 thousand one, is held invalid, such invalidity shall not affect
22 other provisions or applications of this article, and to this end,
23 such provisions are deemed severable.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 6. TRIAL.

§56-6-11. Execution of order of inquiry and trial of case by court; six member jury in civil trials; twelve member jury in eminent domain, medical professional liability and criminal trials.

1 (a) The court, in an action at law, if neither party requires
2 a jury, or if the defendant has failed to appear and the plaintiff
3 does not require a jury, shall ascertain the amount the plaintiff
4 is entitled to recover in the action, if any, and render judgment

5 accordingly. In any case, in which a trial by jury would be
6 otherwise proper, the parties or their counsel, by consent
7 entered of record, may waive the right to have a jury, and
8 thereupon the whole matter of law and fact shall be heard and
9 determined, and judgment given by the court. Absent such
10 waiver, in any civil trial a jury shall consist of six members and
11 in any criminal trial a jury shall consist of twelve members.

12 (b) The provisions of this section do not apply to any
13 proceeding had pursuant to article two, chapter fifty-four of this
14 code, the provisions of which apply to all cases involving the
15 taking of property for a public use.

16 (c) The provisions of this section providing for a six
17 member jury trial do not apply to any proceeding had pursuant
18 to article seven-b, chapter fifty-five of this code, the provisions
19 of which apply to all cases involving a medical professional
20 liability action.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect for
2 services rendered as such clerk the following fees, and such
3 fees shall be paid in advance by the parties for whom such
4 services are to be rendered:

5 (1) For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any extraordi-
7 nary remedy, the docketing of civil appeals, or any other action,
8 cause, suit or proceeding, eighty-five dollars;

9 (2) Beginning on and after the first day of January, two
10 thousand two, for instituting an action for medical professional
11 liability, two hundred fifty dollars;

12 (3) Beginning on and after the first day of July, one
13 thousand nine hundred ninety-nine, for instituting an action for
14 divorce, separate maintenance or annulment, one hundred
15 thirty-five dollars;

16 (4) For petitioning for the modification of an order involv-
17 ing child custody, child visitation, child support or spousal
18 support, eighty-five dollars; and

19 (5) For petitioning for an expedited modification of a child
20 support order, thirty-five dollars.

21 (b) In addition to the foregoing fees, the following fees
22 shall likewise be charged and collected:

23 (1) For preparing an abstract of judgment, five dollars;

24 (2) For any transcript, copy or paper made by the clerk for
25 use in any other court or otherwise to go out of the office, for
26 each page, fifty cents;

27 (3) For action on suggestion, ten dollars;

28 (4) For issuing an execution, ten dollars;

29 (5) For issuing or renewing a suggestee execution, includ-
30 ing copies, postage, registered or certified mail fees and the fee
31 provided by section four, article five-a, chapter thirty-eight of
32 this code, three dollars;

33 (6) For vacation or modification of a suggestee execution,
34 one dollar;

35 (7) For docketing and issuing an execution on a transcript
36 of judgment from magistrate's court, three dollars;

37 (8) For arranging the papers in a certified question, writ of
38 error, appeal or removal to any other court, five dollars;

39 (9) For postage and express and for sending or receiving
40 decrees, orders or records, by mail or express, three times the
41 amount of the postage or express charges;

42 (10) For each subpoena, on the part of either plaintiff or
43 defendant, to be paid by the party requesting the same, fifty
44 cents; and

45 (11) For additional service (plaintiff or appellant) where
46 any case remains on the docket longer than three years, for each
47 additional year or part year, twenty dollars.

48 (c) The clerk shall tax the following fees for services in any
49 criminal case against any defendant convicted in such court:

50 (1) In the case of any misdemeanor, fifty-five dollars; and

51 (2) In the case of any felony, sixty-five dollars.

52 (d) No such clerk shall be required to handle or accept for
53 disbursement any fees, cost or amounts, of any other officer or
54 party not payable into the county treasury, except it be on order
55 of the court or in compliance with the provisions of law
56 governing such fees, costs or accounts.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.

1 (a) Except for those payments to be made from amounts
2 equaling filing fees received for the institution of divorce

3 actions as prescribed in subsection (b) of this section, and
4 except for those payments to be made from amounts equaling
5 filing fees received for the institution of actions for divorce,
6 separate maintenance and annulment as prescribed in subsec-
7 tion (b) of this section, for each civil action instituted under the
8 rules of civil procedure, any statutory summary proceeding, any
9 extraordinary remedy, the docketing of civil appeals, or any
10 other action, cause, suit or proceeding in the circuit court, the
11 clerk of the court shall, at the end of each month, pay into the
12 funds or accounts described in this subsection an amount equal
13 to the amount set forth in this subsection of every filing fee
14 received for instituting the action as follows:

15 (1) Into the regional jail and correctional facility authority
16 fund in the state treasury established pursuant to the provisions
17 of section ten, article twenty, chapter thirty-one of this code, the
18 amount of sixty dollars; and

19 (2) Into the court security fund in the state treasury estab-
20 lished pursuant to the provisions of section fourteen, article
21 three, chapter fifty-one of this code, the amount of five dollars.

22 (b) For each action for divorce, separate maintenance or
23 annulment instituted in the circuit court, the clerk of the court
24 shall, at the end of each month, report to the supreme court of
25 appeals, the number of actions filed by persons unable to pay,
26 and pay into the funds or accounts in this subsection an amount
27 equal to the amount set forth in this subsection of every filing
28 fee received for instituting the divorce action as follows:

29 (1) Into the regional jail and correctional facility authority
30 fund in the state treasury established pursuant to the provisions
31 of section ten, article twenty, chapter thirty-one of this code, the
32 amount of ten dollars;

33 (2) Into the special revenue account of the state treasury,
34 established pursuant to section six hundred four, article two,
35 chapter forty-eight of this code, an amount of thirty dollars;

36 (3) Into the family court fund established under section
37 twenty-two, article two-a, chapter fifty-one of this code, an
38 amount of seventy dollars; and

39 (4) Into the court security fund in the state treasury,
40 established pursuant to the provisions of section fourteen,
41 article three, chapter fifty-one of this code, the amount of five
42 dollars.

43 (c) Notwithstanding any provision of subsection (a) or (b)
44 of this section to the contrary, the clerk of the court shall, at the
45 end of each month, pay into the family court fund established
46 under section twenty-two, article two-a, chapter fifty-one of this
47 code an amount equal to the amount of every fee received for
48 petitioning for the modification of an order involving child
49 custody, child visitation, child support or spousal support as
50 determined by subdivision (3), subsection (a), section eleven of
51 this article and for petitioning for an expedited modification of
52 a child support order as provided in subdivision (4), subsection
53 (a), section eleven of this article.

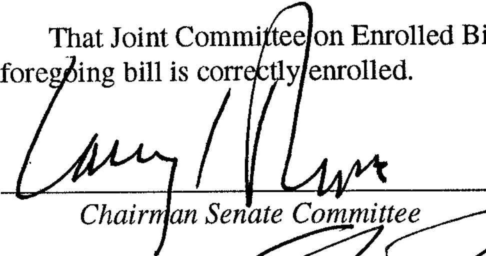
54 (d) The clerk of the court from which a protective order is
55 issued shall, at the end of each month, pay into the family court
56 fund established under section twenty-two, article two-a,
57 chapter fifty-one of this code an amount equal to every fee
58 received pursuant to the provisions of section five hundred
59 eight, article twenty-seven, chapter forty-eight of this code.

60 (e) The clerk of each circuit court shall, at the end of each
61 month, pay into the regional jail and correctional facility
62 authority fund in the state treasury an amount equal to forty
63 dollars of every fee for service received in any criminal case
64 against any respondent convicted in such court and shall pay an

65 amount equal to five dollars of every such fee into the court
66 security fund in the state treasury established pursuant to the
67 provisions of section fourteen, article three, chapter fifty-one of
68 this code.

69 (f) Beginning the first day of January, two thousand two,
70 the clerk of the circuit court shall, at the end of each month, pay
71 into the medical liability fund established under article twelve-
72 b, chapter twenty-nine of this code an amount equal to one
73 hundred sixty-five dollars of every filing fee received for
74 instituting a medical professional liability action.

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

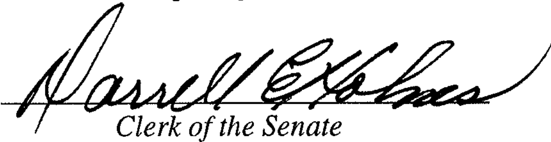


Chairman Senate Committee

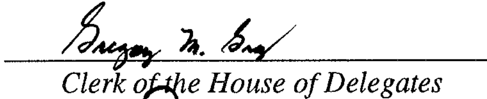
Chairman House Committee

Originating in the House.

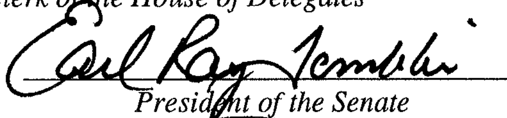
In effect from passage.



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 12th

day of December, 2001.

Governor

PRESENTED TO THE

GOVERNOR

Date 12/6/07

Time 4:30 pm