

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 278**

BY SENATORS FERNS, TAKUBO, WALTERS, STOLLINGS  
AND PALUMBO

[Originating in the Committee on the Judiciary;  
reported on February 4, 2016.]



1 A BILL to amend and reenact §33-20F-2 and §33-20F-4 of the Code of West Virginia, 1931, as  
2 amended, all relating to clarifying that a physicians' mutual insurance company is not a  
3 state actor or a quasi-state actor, allowing it to operate as any other commercial insurance  
4 company licensed in West Virginia; and clarifying and revising findings and purpose.

*Be it enacted by the Legislature of West Virginia:*

1 That §33-20F-2 and §33-20F-4 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted, all to read as follows:

**ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.**

**§33-20F-2. Findings and purpose.**

1 (a) The Legislature finds that:

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

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

4 (3) Such crises are part of a naturally recurring cycle of a hard market period, when  
5 medical professional liability coverage is difficult to obtain, and a soft market period, when  
6 coverage is more readily available;

7 (4) Such crises are particularly acute in this state due to the small size of the insurance  
8 market;

9 (5) During a hard market period, insurers tend to flee this state, creating a crisis for  
10 physicians who are left without professional liability coverage;

11 (6) During the current crisis, physicians in West Virginia find it increasingly difficult, if not  
12 impossible, to obtain medical liability insurance either because coverage is unavailable or  
13 unaffordable;

14 (7) The difficulty or impossibility of obtaining medical liability insurance may result in many  
15 qualified physicians leaving the state;

16 (8) Access to quality health care is of utmost importance to the citizens of West Virginia;

17 (9) A mechanism is needed to provide an enduring solution to this recurring medical  
18 liability crisis;

19 (10) A physicians' mutual insurance company or a similar entity has proven to be a  
20 successful mechanism in other states for helping physicians secure insurance and for stabilizing  
21 the insurance market;

22 ~~(11) There is a substantial public interest in creating a method to provide a stable medical~~  
23 ~~liability market in this state;~~

24 ~~(12)~~(11) The state has attempted to temporarily alleviate the current medical crisis by the  
25 creation of programs to provide medical liability coverage through the Board of Risk and Insurance  
26 Management;

27 ~~(13)~~(12) The state-run program is a substantial actual and potential liability to the state;

28 ~~(14)~~(13) There is substantial public benefit in transferring the actual and potential liability  
29 of the state to the private sector; ~~and creating a stable self-sufficient entity which will be a source~~  
30 ~~of liability insurance coverage for physicians in this state;~~

31 ~~(15)~~(14) A stable, financially viable insurer in the private sector will provide a continuing  
32 source of insurance funds to compensate victims of medical malpractice; and

33 ~~(16)~~(15) Because the public will greatly benefit from the formation of a physicians' mutual  
34 insurance company, state efforts to encourage and support the formation of such an entity,  
35 including providing a low-interest loan for a portion of the entity's initial capital, is in the clear public  
36 interest.

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

39 (1) A means for physicians to obtain medical liability insurance that is available and  
40 affordable; and

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

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

1           (a) Subject to the provisions of this article, a physicians' mutual insurance company may  
2 be created as a domestic, private, nonstock corporation. The company must remain for the  
3 duration of its existence a domestic mutual insurance company owned by its policyholders and  
4 may not be converted into a stock corporation or any other entity not owned by its policyholders.

5           (b) For the duration of its existence, the company is not and may not be considered a  
6 department, unit, agency, or instrumentality of the state, state actor, quasi-state actor or quasi-  
7 public entity for any purpose. Any debts, claims, obligations and liabilities of the company,  
8 whenever incurred, are the debts, claims, obligations and liabilities of the company only and not  
9 of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

10           (c) The moneys of the company are not and may not be considered part of the General  
11 Revenue Fund of the state. The debts, claims, obligations and liabilities of the company are not  
12 and may not be considered a debt of the state or a pledge of the credit of the state.

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

15           (e) All premiums collected by the company are subject to the premium taxes, additional  
16 premium taxes, additional fire and casualty insurance premium taxes and surcharges contained  
17 in sections fourteen, fourteen-a, fourteen-d and thirty-three, article three of this chapter.