WEST VIRGINIA CODE: §23-2C-10

§23-2C-10. West Virginia adverse risk assignment.

(a) The Insurance Commissioner shall provide for the development and administration of an assigned risk plan to provide workers' compensation insurance coverage to employers who are unable to procure coverage in the voluntary market.

(b) To qualify for coverage under the plan, an employer must have been categorically declined coverage by at least two insurers that are not affiliated with each other. The employer has the burden of establishing that at least two unaffiliated insurers are unwilling to provide coverage at any premium level that is reasonably related to the risk presented by the employer. The assigned risk plan may also provide for other reasonable qualifications and for the termination of coverage under the plan for specified reasons.

(c) Any employer that satisfies the requirements of subsection (b) of this section and other qualifications established in the plan shall be provided coverage at a premium level to be determined or approved by the Insurance Commissioner, which premiums shall be actuarially sound, consistent with classification and rate-making methodologies found in the insurance industry, and calculated to enable the plan to be self-sustaining and, to the greatest extent possible, able to operate without subsidies from employers and insurers in the voluntary market. Rates may not be excessive, inadequate or unfairly discriminatory.

(d) The Insurance Commissioner may designate any third party, including any private carrier or rating organization with substantial experience in developing and administering similar programs in other states, to develop and administer the assigned risk plan for a period of three years, and thereafter, shall contract with any qualified party, including the then current administrator, to continue the administration of the assigned risk plan: Provided, That the Insurance Commissioner must approve the plan prior to the plan becoming operative. The plan established pursuant to this section shall require that all private carriers participate as a condition of their authority to transact business in this state.

(e) In the event the plan incurs a deficit in one or more policy years, the Insurance Commissioner may assess all private carriers providing workers' compensation insurance in voluntary market funds as are necessary to cover the deficits. The assessments shall result in an equitable distribution of costs among private carriers based upon premiums received by the private carriers in the private market. Assessments made upon the policies of each private carrier pursuant to this section may be collected by each carrier in the form of a surcharge.