WEST VIRGINIA CODE CHAPTER 33 ARTICLE 2

WV Legislature

§33-2-1. Office continued; appointment, qualifications and term.

There is hereby continued in effect the state agency heretofore created and known as the "Insurance Commissioner of West Virginia" which agency shall consist of an Insurance Commissioner and such employees as may be authorized by law. The term of the present commissioner shall continue until July 1, 1959. All appointments to said office made thereafter shall be for a period of six years, except that in case of a vacancy the appointment shall be made to fill the unexpired term. The commissioner shall be a citizen and resident of this state and shall be appointed by the Governor, by and with the advice and consent of the Senate. Before taking the oath of office the commissioner shall sever all connections either direct or indirect with any and all insurers subject to his supervision and with any person representing any such insurer, except as a policyholder or claimant.

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§33-2-2. Compensation and expenses of commissioner and employees; location of office.

The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and actual expenses incurred in the performance of official business, which compensation shall be in full for all services. The office of the commissioner shall be maintained in the Capitol or other suitable place in Charleston. The commissioner may employ such persons and incur such expenses as may be necessary in the discharge of his or her duties and shall fix the compensation of such employees, but such compensation shall not exceed the appropriation therefor. The commissioner may reimburse employees for reasonable expenses incurred for job-related training and educational seminars and courses. All compensation for salaries and expenses of the commissioner and his or her employees shall be paid at least twice per month out of the State Treasury by requisition upon the Auditor, properly certified by the commissioner.

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§33-2-3. Duties of the commissioner; employment of legal counsel.

(a) The commissioner shall enforce the provisions of this chapter and section fifteen-a, article two of chapter forty-eight and perform the duties required thereunder; shall affix the commissioner's official seal to all documents and papers required to be filed in other states by domestic insurers and to other papers when an official seal is required; and shall, on or before the tenth day of each month, pay into the state Treasury all fees and moneys which he or she has received during the preceding calendar month.

(b) Notwithstanding any provisions of this code to the contrary, the commissioner may acquire such legal services as are deemed necessary, including representation of the commissioner before any court or administrative body. Such counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commissioner may call upon the Attorney General for legal assistance and representation as provided by law.

WV Legislature

§33-2-3a. Administrative investigations.

(a) In addition to the authority granted to the fraud unit created in article forty-one of this chapter and to the workers' compensation fraud and abuse unit previously transferred to the commissioner pursuant to section one-b, article one, chapter twenty-three of this code, the commissioner has the authority to conduct investigations whenever he or she has cause to believe that a violation of any provision of this chapter or of chapter twenty-three of this code has been or is being committed.

(b) Employees designated by the commissioner are permitted to operate vehicles owned or leased by the state displaying Class A registration plates when engaged in carrying out the investigative duties assigned to the commissioner by this chapter.

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§33-2-4. Authority to take depositions, subpoena witnesses, etc.

(a) For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondences, memoranda, agreements or other documents or records which the commissioner considers relevant or material to the inquiry. The commissioner's authority to subpoena witnesses and documents outside the state shall exist to the maximum extent permissible under federal Constitutional law.

(b) Subpoenas may be issued to any person and may require that person, among other things, to:

(1) Testify under oath;

(2) Answer written interrogatories under oath;

(3) Produce documents and tangible things; and

(4) Permit inspection and copying of documents.

(c) Content of subpoena. A subpoena shall:

(1) Describe generally the nature of the investigation;

(2) If the subpoena requires testimony under oath, specify the date, time and place for the taking of testimony;

(3) If the subpoena requires answers to written interrogatories, contain a copy of the written interrogatories;

(4) If the subpoena requires the production of tangible things or documents:

(A) Describe the things and documents to be produced with reasonable specificity; and

(B) Specify a date, time, and place at which the things and documents are to be produced;

(5) Notify the person to whom the subpoena is directed of the obligation to supplement responses;

(6) Advise the person to whom the subpoena is directed that the person may be represented by counsel; and

(7) Identify a member of the office of the Insurance Commissioner who may be contacted in reference to the subpoena.

(d) For subpoenas to corporations and other entities, the following apply:

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(1) A subpoena directed to a corporation, partnership or other business entity that requires testimony under oath shall describe with reasonable particularity the subject matter of the testimony;

(2) An entity that receives a subpoena to answer written interrogatories or to testify under oath shall designate one or more of its officers, agents, employees or other authorized persons familiar with the subject matter specified in the subpoena to respond to the subpoena on its behalf;

(3) The persons designated by an entity to respond to a subpoena on its behalf shall answer the interrogatories or testify as to all matters known or reasonably available to the entity; and

(4) A subpoena directed to an entity that requires testimony under oath or answers to written interrogatories shall advise the entity of its obligations under this section.

(e) Effect of other proceedings. The institution or pendency of administrative or judicial proceedings against a person by the commissioner does not relieve the person of his or her obligation to respond to a subpoena issued under this section.

(f) Subpoenas for interrogatories and answers and requests for production of documents or tangible things and answers propounded and obtained under this section pursuant to an investigation are exempted from disclosure under the provisions of article one, chapter twenty-nine-b of this code, and are not open to public inspection. The commissioner may not disclose facts or information obtained from the investigation except as the official duty of the commissioner requires.

(g) Nothing in this section prohibits the commissioner from providing information or receiving information from any local, state, federal or international law-enforcement authorities, including any prosecuting authority; from complying with subpoenas or other lawful process in criminal proceedings or other action by the state; or from taking action as may otherwise be provided in this article.

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§33-2-5. Witness fees.

No person shall be excused from attending and testifying in obedience to a subpoena issued hereunder on the ground of failure of tender or payment of a witness fee or mileage fee unless the witness makes demand for such payment as a condition precedent to the giving of testimony or the production of documents required by the subpoena, and unless such payment is not thereupon made. No insurer, agent, broker, solicitor or other person subject to the provisions of this chapter whose conduct, condition or practices are being investigated, and no officer, director or employee of any such person, shall be entitled to witness or mileage fees. In the event that witness or mileage fees are demanded and paid, the amount of same shall be determined as $10 for each day of attendance and 10¢ per mile for each mile necessarily traveled to the place of attendance, and the same for returning. The sum to which a witness is entitled shall be paid out of the treasury in any case in which the attendance is for the commissioner. In all other cases, it shall be paid by the person at whose instance the summons is issued.

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§33-2-6. Service of subpoena; compelling compliance.

The subpoena shall be served in the manner as if issued from a circuit court unless otherwise provided. In case a person refuses to obey any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the commissioner or his representative may invoke the aid of any circuit court in order that the testimony or evidence be produced. Upon proper showing, such court shall issue a subpoena or order requiring such person to appear before the commissioner or his representative and produce all evidence and give all testimony touching the matter in question. A person failing to obey such order may be punished by such court as for contempt.

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§33-2-7. Immunity of witness.

If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing conducted pursuant to this chapter or chapter twenty-three of this code or in any cause or proceeding instituted by the commissioner pursuant to this chapter or chapter twenty-three of this code on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a criminal penalty and shall notwithstanding be directed by the commissioner to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any criminal penalty for or on account of any matter or thing concerning which he may testify or produce evidence, pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding: Provided, That no such individual so testifying shall be exempt from prosecution or punishment for any perjury or false swearing, committed by him while so testifying and the testimony or evidence so given or produced is admissible against him upon any criminal action, investigation or proceeding concerning such perjury or false swearing, nor is he exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to this chapter. Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual is not entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

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§33-2-8. Insured to produce records upon request.

Upon request of the commissioner any person in West Virginia who is the insured under any policy issued by an insurer upon a subject of insurance resident, located or to be performed in West Virginia, shall produce for examination all policies and other documents evidencing and relating to such insurance, and shall disclose the amount of the gross premiums paid or agreed to be paid for the insurance, all persons through whom such insurance was procured or who participated in the transaction in any manner, and such other information relative to the placing of such insurance as may reasonably be required.

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§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

(a) The purpose of this section is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this section are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be considered appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

(b) For purposes of this section, the following definitions shall apply:

(1) "Commissioner" means the Commissioner of Insurance of this state;

(2) "Company" or "insurance company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner, including, but not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group or other insurer regardless of the type of coverage written, benefits provided or guarantees made by each;

(3) "Department" means the Department of Insurance of this state; and

(4) "Examiners" means the Commissioner of Insurance or any individual or firm having been authorized by the commissioner to conduct an examination pursuant to this section, including, but not limited to, the commissioner's deputies, other employees, appointed examiners or other appointed individuals or firms who are not employees of the Department of Insurance.

(c) The commissioner or his or her examiners may conduct an examination under this section of any company as often as the commissioner in his or her discretion considers appropriate. The commissioner or his or her examiners shall at least once every five years visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The commissioner may also examine the affairs of any insurer applying for a license to transact any insurance business in this state.

(d) The commissioner or his or her examiners shall, at a minimum, conduct an examination of every foreign or alien insurer licensed in this state not less frequently than once every five years. The examination of an alien insurer may be limited to its United States business:

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Provided, That in lieu of an examination under this section of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, the reports may only be accepted if:

(1) The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or

(2) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(e) In scheduling and determining the nature, scope and frequency of examinations conducted pursuant to this section, the commissioner may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion under this section.

(f) For purposes of completing an examination of any company under this section, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(g) The commissioner may also cause to be examined, at the times as he or she considers necessary, the books, records, papers, documents, correspondence and methods of doing business of any agent, broker, excess lines broker or solicitor licensed by this state. For these purposes, the commissioner or his or her examiners shall have free access to all books, records, papers, documents and correspondence of all the agents, brokers, excess lines brokers and solicitors wherever the books, records, papers, documents and records are situate. The commissioner may revoke the license of any agent, broker, excess lines broker or solicitor who refuses to submit to the examination.

(h) In addition to conducting an examination, the commissioner or his or her examiners may, as the commissioner considers necessary, analyze or review any phase of the operations or methods of doing business of an insurer, agent, broker, excess lines broker, solicitor or other individual or corporation transacting or attempting to transact an insurance business in the State of West Virginia. The commissioner may use the full resources provided by this section in carrying out these responsibilities, including any personnel and equipment provided by this section as the commissioner considers necessary.

(i) Examinations made pursuant to this section shall be conducted in the following manner:

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(1) Upon determining that an examination should be conducted, the commissioner or his or her designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. The appointment of any examiners pursuant to this section by the commissioner shall not be subject to the requirements of article three, chapter five-a of this code, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the Attorney General. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ any other guidelines or procedures as the commissioner may consider appropriate;

(2) Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subdivision (1) of this subsection timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so;

(3) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, refusal or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, refusal or nonrenewal of any license or authority shall be conducted pursuant to section eleven of this article;

(4) The commissioner or his or her examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination, analysis or review. The subpoenas shall be enforced pursuant to the provisions of section six of this article;

(5) When making an examination, analysis or review under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, professionals or specialists with training or experience in reinsurance, investments or information systems or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination, analysis or review or, in the commissioner's discretion, paid from the Commissioner's Examination Revolving Fund. The commissioner may recover costs paid from the Commissioner's Examination Revolving Fund pursuant to this subdivision from the company upon which the examination, analysis or review is conducted unless the subject of the examination, analysis or review is an individual described in subdivision (2), subsection (q) of this section;

(6) Nothing contained in this section may be construed to limit the commissioner's authority to terminate or suspend any examination, analysis or review in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. The commissioner or his or

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her examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, analysis or review whether or not a written report of the examination has at that time either been made, served or filed in the commissioner's office;

(7) Nothing contained in this section may be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents or any other information discovered or developed during the course of any examination, analysis or review in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, consider appropriate. An examination report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against an insurance company, its officers or agents and shall be prima facie evidence of the facts stated therein.

(j) Examination reports prepared pursuant to the provisions of this section shall comply with the following requirements:

(1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and any conclusions and recommendations the examiners find reasonably warranted from the facts;

(2) No later than sixty days following completion of the examination the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report;

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation; or

(B) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refiling pursuant to subdivision (2) of this subsection; or

(C) Calling for an investigatory hearing with no less than twenty days' notice to the company

for purposes of obtaining additional documentation, data, information and testimony;

(4) All orders entered pursuant to this subsection shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any order issued pursuant to paragraph (A), subdivision (3) of this subsection shall be considered a final administrative decision and may be appealed pursuant to section fourteen of this article and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(k) Hearings conducted pursuant to this section shall be subject to the following requirements:

(1) Any hearing conducted pursuant to this section by the commissioner or the commissioner's authorized representative shall be conducted as a nonadversarial, confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any hearing, the commissioner shall enter an order pursuant to paragraph (A), subdivision (3), subsection (j) of this section;

(2) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents considered relevant to the investigation whether under the control of the commissioner, the company or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record. Nothing contained in this section shall require the commissioner to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency;

(3) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the commissioner shall be permitted to make closing statements and may be represented by counsel of their choice.

(l) Adoption of the examination report shall be subject to the following requirements:

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(1) Upon the adoption of the examination report under paragraph (A), subdivision (3), subsection (j) of this section, the commissioner may continue to hold the content of the examination report as private and confidential information for a period of ninety days except to the extent provided in subdivision (6), subsection (i) of this section. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication;

(2) Nothing contained in this section may prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results or any matter relating thereto or the results of any analysis or review to the insurance department of this or any other state or country or to law-enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this section;

(3) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, analysis or review, he or she may initiate any proceedings or actions as provided by law;

(4) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination, analysis or review made under this section must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subdivision (5), subsection (i) of this section. Access may also be granted in accordance with section nineteen of this article. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section unless the prior written consent of the company to which it pertains has been obtained.

(m) The commissioner may require any examiner to furnish a bond in such amount as commissioner may determine to be appropriate and the bond shall be approved, filed and premium paid, with suitable proof submitted to the commissioner, prior to commencement of employment by the commissioner. No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this section. This section shall not be construed to automatically preclude an examiner from being:

(1) A policyholder or claimant under an insurance policy;

(2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(3) An investment owner in shares of regulated diversified investment companies; or

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(4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed;

(5) Notwithstanding the requirements of this subsection, the commissioner may retain, from time to time, on an individual basis qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions even though these persons may, from time to time, be similarly employed or retained by persons subject to examination under this section.

(n) Personnel conducting examinations, analyses or reviews of either a domestic, foreign or alien insurer shall be compensated for each day worked at a rate set by the commissioner. The personnel shall also be reimbursed for their travel and living expenses at the rate set by the commissioner. Other individuals who are not employees of the Department of Insurance shall all be compensated for their work, travel and living expenses at rates approved by the commissioner or as otherwise provided by law. As used in this section, the costs of an examination, analysis or review means:

(1) The entire compensation for each day worked by all personnel, including those who are not employees of the Department of Insurance, the conduct of the examination, analysis or review calculated as hereinbefore provided;

(2) Travel and living expenses of all personnel, including those who are not employees of the Department of Insurance, directly engaged in the conduct of the examination, analysis or review calculated at the rates as hereinbefore provided for;

(3) All other incidental expenses incurred by or on behalf of the personnel in the conduct of any authorized examination, analysis or review.

(o) (1) All property and casualty insurers subject to the provisions of this section shall annually pay to the commissioner on or before July 1, 1991, and every July 1 thereafter an examination assessment fee of up to $5,000. $450 of this fee shall be paid to the Treasurer of the state to the credit of a special revolving fund to be known as the Commissioner's Examination Revolving Fund which is hereby established; up to $4,200 shall be paid to the Treasurer of the state to the credit of the Unfair Claims Settlement Practice Trust Fund established in section four-b, article eleven of this chapter and $350 shall be paid to the Treasurer of the state. If the trust fund has moneys in excess of $1,000,000, the examination assessment fee shall be $800 and the $5,000 fee shall only be reinstated at whatever amount the commissioner deems necessary to maintain the fund, if the fund value goes below $1,000,000. The commissioner may at his or her discretion, upon notice to the insurers subject to this subsection, increase this examination assessment fee or levy an additional examination assessment fee of $250. In no event may the total examination assessment fee, including any additional examination assessment fee levied, exceed $5,250 per insurer in any calendar year.

(2) All insurers other than property and casualty insurers subject to the provisions of this

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section shall annually pay to the commissioner on or before July 1, 1991, and every July 1 thereafter an examination assessment fee of$800. $450 of this fee shall be paid to the Treasurer of the state to the credit the Commissioner's Examination Revolving Fund and $350 shall be paid to the Treasurer of the state. The commissioner may at his or her discretion, upon notice to the insurers subject to this subsection, increase this examination assessment fee or levy an additional examination assessment fee of $250. In no event may the total examination assessment fee, including any additional examination assessment fee levied, exceed $1,500 per insurer in any calendar year.

(p) The moneys collected by the commissioner from an increase or additional examination assessment fee shall be paid to the Treasurer of the state to be credited to the commissioner's Examination Revolving Fund. Any funds expended or obligated by the commissioner from the Commissioner's Examination Revolving Fund may be expended or obligated solely for defrayment of the costs of examinations, analyses or reviews of the financial affairs and business practices of insurance companies, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state made by the commissioner pursuant to this section or for the purchase of equipment and supplies, travel, education and training for the commissioner's deputies, other employees and appointed examiners necessary for the commissioner to fulfill the statutory obligations created by this section.

(q) The commissioner may require other individuals who are not employees of the Department of Insurance who have been appointed by the commissioner to conduct or participate in the examination, analysis or review of insurers, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state to:

(1) Bill and receive payments directly from the insurance company being examined, analyzed or reviewed for their work, travel and living expenses as previously provided in this section; or

(2) If an individual agent, broker or solicitor is being examined, analyzed or reviewed, bill and receive payments directly from the Commissioner's Examination Revolving Fund for their work, travel and living expenses as previously provided in this section. The commissioner may recover costs paid from the Commissioner's Examination Revolving Fund pursuant to this subdivision from the person upon whom the examination, analysis or review is conducted.

(r) The commissioner and his or her examiners shall be entitled to immunity to the following extent:

(1) No cause of action shall arise nor shall any liability be imposed against the commissioner or his or her examiners for any statements made or conduct performed in good faith while carrying out the provisions of this section;

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(2) No cause of action shall arise, nor shall any liability be imposed, against any person for the act of communicating or delivering information or data to the commissioner or his or her examiners pursuant to an examination, analysis or review made under this section if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive;

(3) The commissioner or any examiner shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this section and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated;

(4) This subsection does not abrogate or modify in any way any Constitutional immunity or common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (1) of this subsection.

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§33-2-9a. Imposing a one-time assessment on all insurance carriers.

For the purpose of completely novating the physician liability currently borne by the state under the West Virginia health care provider professional liability insurance availability act found in article twelve-b, chapter twenty-nine of this code, and to help capitalize the physicians' mutual insurance company created pursuant to article twenty-f of this chapter, and for all the reasons set forth in section two of said article, the Insurance Commissioner shall impose a special one-time assessment of $2,500 on all insurers licensed under this chapter for the privilege of writing insurance in the State of West Virginia, except risk retention groups defined in subsection (f), section four, article thirty-two of this chapter and risk purchasing groups defined in subsection (e), section seventeen of said article. The assessment is due and payable on July 1, 2003. The commissioner shall transfer funds collected pursuant to this section to the physicians' mutual insurance company.

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§33-2-10. Rules and regulations.

(a) The commissioner is authorized to promulgate and adopt rules relating to insurance as are necessary to discharge his or her duties and exercise his or her powers and to effectuate the provisions of this chapter, protect and safeguard the interests of policyholders and the public of this state.

(b) The commissioner is authorized to promulgate rules necessary to discharge his or her duties relating to workers' compensation insurance as set forth in chapter twenty-three of this code, which shall be exempt from the provisions of chapter twenty-nine-a, article three of this code, except that these rules shall be filed with the Secretary of State's Office.

(c) Prior to assuming regulatory authority over workers' compensation insurance pursuant to article two-c, chapter twenty-three of this code, the commissioner shall review and revise all applicable rules to reflect the assumption of this new regulatory authority: Provided, That all such revisions shall be exempt from the provisions of chapter twenty-nine-a, article three, except that the amended rules shall be filed with the Secretary of State's Office.

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§33-2-10a. Insurance emergencies -- suspension of deadlines.

Upon finding that an insurance emergency has occurred, the commissioner, by order, may suspend any deadlines established by rule that apply to actions taken in the course of evaluating or settling claims and, may establish new deadlines in place of those that have been suspended. For purposes of this section, "insurance emergency" means an event, either natural or man-made, which in the opinion of the commissioner is reasonably likely to produce a volume of claims, for a particular place and time, that significantly exceeds the number of claims normally arising in that place and for that time. The commissioner shall limit the order to accommodate the anticipated increase in claims by specifying the geographic area in which claims to which the new deadlines apply arise, the time period during which the claims arise, the cause or nature of the claims, the relative priority of the claims or other characteristics of the claims that the commissioner considers appropriate.

WV Legislature

§33-2-11. Enforcement of orders; revocation of licenses; court action.

In addition to examinations and investigations expressly authorized by this chapter, the commissioner may conduct examinations and investigation of insurance matters he or she considers proper to determine whether any person has violated any provision of this chapter or to secure information useful in the lawful administration of his or her duties. If the commissioner determines, after notice and hearing, that any person is transacting insurance in an illegal, improper or unjust manner or is failing to pay losses and obligations when they become due, excepting claims to which there is a substantial defense, he or she may order the person to discontinue the illegal, improper or unjust manner of transacting insurance, to adjust and pay his or her obligations as they become due: Provided, That in any order issued pursuant to subsection (j), section nine of this article or entered as a result of a regulatory enforcement action initiated and prosecuted by the commissioner pursuant to this section or section eleven, article three of this chapter, the commissioner may, in addition to or in lieu of any other penalties or remedies provided therein, order an insurer to pay restitution to affected persons. If a person fails or refuses within twenty days after notice to obey the order, the commissioner may revoke any license issued by the commissioner and held by the person. In addition, the commissioner may apply to the circuit court, or the judge in vacation, having jurisdiction for an injunction or the appointment of a receiver, or for both. The court or judge may enforce the order of the commissioner by injunction or by appointment of a receiver to take charge of the affairs and property of the person, or both, and may make further orders as may be necessary and proper to effectuate the injunction or receivership.

WV Legislature

§33-2-12. Notice.

Whenever under the provisions of this chapter the commissioner is required to give notice to any person the service of such notice shall be deemed proper and effective with regard to any licensee of the commissioner (including insurers, agents, brokers and solicitors) or any employee of such licensee when such notice directed to such person to be notified shall have been deposited in the United States mail, postage prepaid, addressed to the principal place of business or residence of such licensee as last of record in the commissioner's office. The verified return of the person depositing such notice in the mails as to the fact of such mailing shall be proof of service. With the exception of notice for public hearing as is stated in subsection (g), section five, article twenty of this chapter, notice to a person other than a licensee or employee of a licensee shall be served in the manner provided by law for service of process in civil actions, and such manner of service may also be used and shall constitute effective notice to a licensee or employee of a licensee.

WV Legislature

§33-2-13. Hearings.

The commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties. He shall hold hearings when required by the provisions of this chapter or upon a written demand therefor by a person aggrieved by any act or failure to act by the commissioner or by any rule, regulation or order of the commissioner. Such demand shall specify the grounds to be relied upon as a basis for the relief to be requested at such hearing and such hearing shall be held within forty-five days of receipt by the commissioner of written demand therefor, unless postponed to a later date by mutual agreement. The commissioner may in his discretion stay the effect of any order, rule or regulation pending hearing. The commissioner shall give at least fifteen days' notice of the time, place and matters to be considered at a hearing to all persons directly affected by such hearing. The commissioner shall allow any person directly affected by the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to examine witnesses and present relevant evidence, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf. Formal rules of pleading or evidence need not be observed at any hearing. Upon written request seasonably made by a person directly affected by a hearing, and at such person's expense, or upon his own motion and expense, the commissioner shall cause a full stenographic record of the hearing to be made by a competent reporter. If further requested in writing by a person directly affected by such hearing, the commissioner shall cause such record to be transcribed and made a part of the official record of the hearing, at the expense of such person or may do so at his own motion and expense, and shall furnish a copy thereof to any party directly affected by such hearing at the request and expense of such party. Within forty-five days after completion of a hearing, unless the time be extended by mutual consent, the commissioner shall enter an order containing his findings of fact and conclusions upon the subject matter of such hearing. Such order may affirm, modify or nullify action theretofore taken or may prescribe new action within the scope of the notice of hearing, and a copy thereof shall be mailed to all persons directly affected by such hearing. In the discretion of the commissioner a rehearing may be granted to any party to a hearing upon written request filed with the commissioner within thirty days of the mailing of such order. Costs of any hearing or rehearing for the attendance of witnesses, service of subpoenas, and stenographic record and transcript may be taxed by the commissioner to any party or parties against whom he shall find and may be recovered in a civil action.

WVLegislature

§33-2-14. Judicial review.

An appeal from the commissioner shall be taken only from an order entered after hearing or an order refusing a hearing. Any person aggrieved by any such order may, within thirty days after the order has been mailed or delivered to the persons entitled to receive the same, or within thirty days after an order denying rehearing has been so mailed or delivered, appeal to the circuit court of Kanawha county, or the judge thereof in vacation, by presenting a written petition to such court or judge and mailing a copy thereof to the commissioner. Upon the receipt of such copy the commissioner shall forthwith transmit to the clerk of such court the record of the proceedings before him The court or judge shall fix a time for hearing upon said petition at his earliest convenience. Notice in writing of the time and place of said hearing shall be given by petitioner to the commissioner at least fifteen days prior thereto. The court or judge shall, without a jury, hear and determine the matter upon the record of proceedings before the commissioner, except that for good cause shown the court may permit the introduction of additional evidence, and may enter an order revising or reversing the order of the commissioner, or may affirm such order, or remand the action to the commissioner for further proceedings. Pending such appeal the order of the commissioner shall be in full force and effect until final determination, unless the commissioner shall in his discretion have stayed the effect of his order pending final determination of the appeal or unless the court or judge thereof before whom the appeal is pending shall enter an order staying the commissioner's order until final determination. The judgment of the circuit court may be reviewed upon appeal by the Supreme Court of Appeals in the same manner as other civil cases to which the state is a party.

WV Legislature

§33-2-15. Annual report by commissioner.

The commissioner shall annually, on or before November 1, submit to the Governor a report for the previous calendar year of his or her official acts, and of the condition of insurers doing business in this state, with a condensed statement of their reports to him or her, abstracts of all accounts rendered to any court by receivers of insolvent insurers, abstracts or reports to the commissioner by the receivers, together with a statement of all assessments, fees, taxes and related charges received from insurers and other licensees and paid by him or her into the state Treasury.

WV Legislature

§33-2-15a. Annual flood insurance notification to public entities by commissioner.

The commissioner shall annually post a notification on the agency's website with the following objectives:

(1) To make state and local governmental entities and nonprofit organizations aware of the 1988 amendments to the federal Robert T. Stafford Emergency Assistance and Disaster Relief Act which impose penalties in the form of reductions in Federal Emergency Management Agency disaster relief funds on public entities who fail to purchase adequate flood insurance on all property located in identified flood hazard areas;

(2) To make state and local governmental entities and nonprofit organizations generally aware of the magnitude of risk exposure and potential financial loss that may result from these penalties; and

(3) To make state and local governmental entities and nonprofit organizations aware that low-cost, federally subsidized flood insurance may be available through the National Flood Insurance Program.

WV Legislature

§33-2-15b. Reports to the Legislature.

(a) By February 1, 2005, the commissioner shall submit to the Legislature a report on third party causes of action;

(b) The report shall contain the following information:

(1) The legal history of the creation of a third party causes of action brought pursuant to Unfair Trade Practices Act as codified in article eleven of this chapter;

(2) An analysis of the impact of third party causes of action upon insurance rates and the availability of insurance in this state;

(3) A summary of the types of data which the commissioner utilized in preparing the analysis: Provided, That the commissioner will not disclose information which is otherwise confidential: Provided, however, That if the commissioner is unable to obtain data which he or she considers necessary to preparing a full analysis, the commissioner shall state in the report:

(A) The reasons that he or she was not able to obtain the data;

(B) Recommendations or proposed legislation for facilitating the collection of necessary data and protecting proprietary information;

(4) Information on what other states have this cause of action;

(5) Based upon the findings of the commissioner, and if the findings so suggest, proposed legislation to address any reforms needed for third party claims under the Unfair Trade Practices Act;

(c) For purpose of preparing the report, the commissioner may request from companies authorized to conduct business in this state any information that he or she believes is necessary to determine the economic effect of third-party lawsuits on insurance premiums. The companies shall not be required to provide the information. Any information which the company agrees to provide, shall be considered confidential by law and privileged, is exempt from disclosure pursuant to chapter twenty-nine-b of this code, is not open to public inspection, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any criminal, private civil or administrative action and is not subject to production pursuant to court order. Notwithstanding any other provisions in this section, while the commissioner is to provide his or her general conclusions based upon the review of the data, the commissioner is not to disclose the information in a manner so as to violate the confidentiality provisions of this section.

WV Legislature

§33-2-15c. Reports to the Legislature.

(a) By February 1, 2005, the commissioner shall submit to the Legislature a report relating to the office of the consumer advocate.

(b) The report shall contain the following information:

(1) An overview of the function of the office of the consumer advocacy and how the office addresses consumer complaints;

(2) The number of staff in the office of the consumer advocate and the structure of the existing office;

(3) Statistics reflecting the number of consumer complaints and types handled by the office from January 1, 2001, until January 1, 2004;

(4) The number of states which have consumer advocates and the lines of insurance for which the advocates are authorized to act on behalf of consumers;

(5) The recommendation of the commissioner in regard to whether this state would benefit by having the role of the consumer advocate expanded to other lines of insurance;

(6) Based upon the findings and recommendations, of the commissioner, and if the findings so suggest, proposed legislation for expanding the office of the consumer advocate to other lines of insurance.

WV Legislature

§33-2-15d. Report to the Legislature.

(a) By January 1, 2007, the Commissioner shall submit a report to the Legislature. The report shall contain analysis of the impact of legislation enacted during the 2005 regular legislative session upon rates and insurance availability in the state.

(b) The Insurance Commissioner shall by proposal of legislative or procedural rules, pursuant to article three, chapter twenty-nine-a of this code, put forth analytical criteria and methodology of all factors to be considered in the report. This purpose of this section is to assure that all relevant factors of concern to the Legislature regarding the effect of the reforms enacted in this article, any savings to consumers, the promotion of insurance availability and impacts on insurance industry services and performance are fully reviewed and addressed.

WV Legislature

§33-2-16. Office of Consumer Advocacy established; Director of Consumer Advocacy; promulgation of rules.

(a) There is hereby created within the agency of the Insurance Commissioner the Office of Consumer Advocacy. The position of Director of the Office of Consumer Advocacy is a full-time position. The Director shall be an attorney licensed in the State of West Virginia. The Director shall be appointed by the Governor for a term of four years to coincide with the term of the Governor and may be discharged only for failure to carry out the duties of the office or for other good and sufficient cause: Provided, That the current Director of the Office of Consumer Advocacy or other appointee of the Commissioner shall continue in the position until the Governor appoints a new Director.

(b) The Insurance Commissioner shall provide office space, equipment and supplies for the office.

(c) The Director may promulgate rules pursuant to article three, chapter twenty-nine-a of this code in order to effect the purposes of this section and sections seventeen and eighteen of this article.

(d) On or before the first day of each regular session of the Legislature, the Director shall file with the Governor, the Clerk of the Senate and the Clerk of the House of Delegates a report detailing the actions taken by the division in the preceding calendar year.

WV Legislature

§33-2-17. Office of Consumer Advocacy.

(a) In addition to the authority established under the rules promulgated by the Director, the Office of Consumer Advocacy is authorized to:

(1) Institute, intervene in, or otherwise participate in, as an advocate for the public interest and the interests of insurance consumers, proceedings in state and federal courts, before administrative agencies or before the Health Care Authority, concerning applications or proceedings before the Health Care Authority or the review of any act, failure to act or order of the Health Care Authority;

(2) At the request of one or more policyholders, or whenever the public interest is served, to advocate the interests of those policyholders in proceedings arising out of any filing made with the Insurance Commissioner by any insurance company or relating to any complaint alleging an unfair or deceptive act or practice in the business of insurance;

(3) At the request of one or more third-party claimant who does not have legal representation at a hearing on his or her claim, or whenever the public interest is served, to advocate the interests of those third-party claimants in proceedings arising out of any filing made with the Insurance Commissioner by any insurance company or relating to any third-party complaint alleging an unfair claims settlement practice;

(4) Institute, intervene in or otherwise participate in, as an advocate for the public interest and the interests of insurance consumers, proceedings in state and federal courts, before administrative agencies, or before the Insurance Commissioner, concerning applications or proceedings before the Commissioner or the review of any act, failure to act or order of the Insurance Commissioner;

(5) Review and compile information, data and studies of the reasonable and customary rate schedules of health care providers and health insurers for the purposes of reviewing, establishing, investigating, or supporting any policy regarding health care insurance rates;

(6) Exercise all the same rights and powers regarding examination and cross-examination of witnesses, presentation of evidence, rights of appeal and other matters as any party in interest appearing before the Insurance Commissioner or the Health Care Authority;

(7) Hire consultants, experts, lawyers, actuaries, economists, statisticians, accountants, clerks, stenographers, support staff, assistants and other personnel necessary to carry out the provisions of this section and sections sixteen and eighteen of this article, which personnel shall be paid from special revenue funds appropriated for the use of the office;

(8) Contract for the services of technically qualified persons in the area of insurance matters to assist in the preparation and presentation of matters before the courts, the Insurance Commissioner, administrative agencies or the Health Care Authority, which persons shall be paid from special revenue funds appropriated for the use of the office;

WV Legislature

(9) Make recommendations to the Legislature concerning legislation to assist the Office in the performance of its duties;

(10) Communicate and exchange data and information with other federal or state agencies, divisions, departments or officers and with other interested parties, including, but not limited to, health care providers, insurance companies, consumers or other interested parties; and

(11) Perform other duties to effect the purposes of the Office.

(b) The provisions of this section do not apply to any filing made by an insurance company, or act or order performed or issued by the Commissioner, or complaint filed by a policyholder with the Commissioner prior to June 30, 1991. All proceedings and orders in connection with these prior matters shall be governed by the law in effect at the time of the filing, or performance or issuance of the act or order.

(c) Nothing in this section may be construed to authorize the Director to participate in the review and consideration of any rate filing made pursuant to this chapter.

WV Legislature

§33-2-18. Funding.

The office of consumer advocacy shall be funded in an amount to be appropriated by the Legislature from special revenue funds.

WV Legislature

§33-2-19. Confidentiality of information.

(a) Documents, materials or other information in the possession or control of the commissioner that are obtained in an investigation of any suspected violation of any provision of this chapter or chapter twenty-three of this code are confidential by law and privileged, are not subject to the provisions of chapter twenty-nine-b of this code and are not open to public inspection. The commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may use the documents, materials or other information if they are required for evidence in criminal proceedings or for other action by the state or federal government and in such context may be discoverable only as ordered by a court of competent jurisdiction exercising its discretion.

(b) Neither the commissioner nor any person who receives documents, materials or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a) of this section except as ordered by a court of competent jurisdiction.

(c) In order to assist in the performance of the commissioner's duties, the commissioner may:

(1) Share documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with regulatory and law-enforcement officials of other foreign or domestic jurisdictions: Provided, That the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;

(2) Receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) Enter into agreements governing sharing and use of information consistent with this subsection.

WV Legislature

§33-2-20. Authority of Commissioner to allow withdrawal of insurance carriers from doing business in the state.

(a) Notwithstanding any provision of the code to the contrary, the Commissioner may, consistent with the provisions of this section, authorize an insurer to withdraw from the line of automobile liability insurance for personal, private passenger automobiles covered by article six-a of this chapter or from doing business entirely in this state if:

(1) The insurer has submitted and received approval from the Commissioner of a withdrawal plan; and

(2) The insurer demonstrates to the satisfaction of the Commissioner that allowing the insurer to withdraw would be in the best interest of the insurer, its policyholders and the citizens of this state.

(b) Any insurer that elects to nonrenew or cancel the particular type or line of insurance coverage provided by section five, article seventeen-a of this chapter shall submit to the Insurance Commissioner a withdrawal plan for informational purposes only prior to cancellation or nonrenewal of all its business in this state.

(c) The Commissioner shall promulgate rules pursuant to chapter twenty-nine-a of this code setting forth the criteria for withdrawal plans: Provided, That the procedural rules previously promulgated setting forth the criteria for withdrawal plans, which rules were made effective September 25, 2004, shall continue in effect in the same manner as if this section had not been amended during the first extraordinary session of the 2005 Legislature.

WV Legislature

§33-2-21. Authority of Insurance Commissioner to regulate Workers' Compensation industry; authority of Insurance Commissioner to administer chapter twenty-three of the Code of West Virginia.

(a) Upon the termination of the Workers' Compensation Commission pursuant to chapter twenty-three of this code, the powers and duties heretofore imposed upon the Workers' Compensation Commission as they relate to general administration of the provisions of said chapter are hereby transferred to and imposed upon the Insurance Commissioner.

(b) Unless otherwise specified in chapter twenty-three of this code, upon termination of the Workers' Compensation Commission, the duties imposed upon the Workers' Compensation Commission as they relate to the award and payment of disability and death benefits and the review of claims in articles four and five of said chapter will be imposed upon the Employers Mutual Insurance Company established pursuant to article two-c of said chapter, a private carrier offering Workers' Compensation insurance in this state and self-insured employers. Whenever reference is made to the Workers' Compensation Commissioner in those articles, the duty prescribed shall apply to the Employers Mutual Insurance Company, a private carrier or self-insured employer, as applicable.

(c) From the effective date of this enactment, the Insurance Commissioner shall regulate all insurers licensed to transact Workers' Compensation insurance in this state and all of the provisions of this chapter shall apply to such insurers, unless otherwise exempted by statute.

WV Legislature

§33-2-21a. State agency workers' compensation programs.

(a) The intent of this section is to provide a means of managing workers' compensation coverage for persons directly employed by the State of West Virginia. For the purposes of this section:

(1) "Discretionary participant" means the Parkways Authority, offices of the State Auditor, the State Treasurer, the Secretary of State, the Attorney General, the Department of Agriculture, the State Senate and House of Delegates or their related entities, the Supreme Court of Appeals, the State Police, and any other spending unit of the state that is required by §11B-2-12 of this code to provide a detailed expenditure schedule to the Secretary of Revenue in his or her capacity as Director of the Budget: *Provided*, That the term "discretionary participant" does not include any executive state entity other than the State Police and the Parkways Authority, any county board of education, any other county entity or its instrumentality, or any municipality or its instrumentality.

(2) "Executive state entity" means the Governor's Office and its affiliated entities, Bureau of Senior Services, or any state department, division, fund, office, position, system, survey, or other entity of state government, however designated, transferred to and incorporated in one of the executive departments created in §5F-1-2 of this code, except the State Police, and that is required by §11B-2-12 of this code to provide a detailed expenditure schedule to the Secretary of Revenue in his or her capacity as Director of the Budget.

(b) Notwithstanding any provision of this code to the contrary, the commissioner has sole responsibility for managing the workers' compensation risks of all executive state entities and for supervising and controlling the workers' compensation programs for such entities: *Provided*, That any discretionary participant may participate in the program upon application to the commissioner under the same terms and conditions as are applicable to executive state entities: *Provided, however*, That a discretionary participant is, in accordance with rules governing the program, permitted to withdraw from continued participation in the program.

(c) The commissioner may assess such fees or surcharges on participants in the program necessary to manage the workers' compensation risks of those participants. All premiums, fees, and surcharges shall be established in accordance with generally acceptable actuarial standards applicable to workers' compensation coverage as to each participant and as to all participants in the aggregate. The commissioner shall establish criteria for assessments of premiums, fees, and surcharges designed to provide the most cost-efficient coverage for all participants.

(d) The provisions of §5A-3-1 *et seq*. of this code relating to the Purchasing Division of the Department of Administration do not apply to any contract entered into by the commissioner in furtherance of the requirements of this section: *Provided*, That those contracts shall be awarded on a competitive basis.

WV Legislature

(e)(1) There is hereby established the State Entities Workers' Compensation Program Fund. All premiums, surcharges, assessments, deposits, or any other moneys or funds deposited or otherwise designated or accruing to the fund as well as all earnings payable to it, shall be deposited in the State Treasury to the credit of the fund. Expenditures from the fund shall be for the purposes set forth in this section, are authorized from collections, and shall not revert to the General Fund. The fund shall be a separate and distinct fund upon the books and records of the Auditor and Treasurer, and disbursements therefrom shall be made upon requisitions signed by the Insurance Commissioner.

(2) Any premiums, assessments or deposits or any other moneys or funds received for the purposes of this section shall be invested by the State Treasurer at the request of the commissioner.

(3) The Insurance Commissioner may borrow funds as is determined necessary from the Insurance Commission Fund, created in §33-3-13b of this code, for the initial operations of the workers' compensation program for state entities: *Provided*, That any borrowed funds shall be deposited to the credit of the State Entities Workers' Compensation Program Fund: *Provided, however*, That these borrowed funds shall be repaid, without interest, and redeposited to the credit of the Insurance Commission Fund as determined by the Insurance Commissioner.

(f) The commissioner may promulgate emergency rules and shall propose for legislative approval legislative rules, in accordance with the provisions of §29A-3-1 *et seq*. of this code, as are necessary to provide for implementation and enforcement of the provisions of this section.

(g) The commissioner shall consult with the State Board of Risk and Insurance Management to solicit any applicable experience and expertise in establishing and managing a program to provide insurance coverage to state agencies.

WV Legislature

§33-2-22. Authority of Insurance Commissioner regarding employers in default to workers' compensation funds; injunctions against defaulting employers.

(a) Upon termination of the Workers' Compensation Commission, all of the powers and authority previously conferred upon the Workers' Compensation Commission pursuant to article two, chapter twenty-three of this code, relating to employers in default to the Workers' Compensation Fund, are hereby transferred to the Insurance Commissioner and shall be applied by the commissioner to those employers in default to the Old Fund or having liability to the Uninsured Employer Fund or who are in policy default or fail to maintain mandatory workers' compensation coverage, all as defined in article two-c, chapter twenty-three of this code.

(b) In any case in which an employer is in default to the Old Fund or has liability to the Uninsured Employer Fund or who is in default on a policy or otherwise fails to maintain mandatory workers' compensation coverage, all as defined in article two-c, chapter twenty-three of this code, the commission may bring an action in the circuit court of Kanawha County to enjoin the employer from continuing to operate the employer's business: Provided, That the commissioner may, in his or her sole discretion, and as an alternative to this action pursuant to this subsection, require the employer to file a bond, in the form prescribed by the commissioner, with satisfactory surety in an amount not less than one hundred fifty percent of the total payments, interest and penalties due.

(c) In any action instituted pursuant to subsection (b) of this section, the circuit court shall issue an injunction prohibiting the employer from operating the employer's business if the Insurance Commissioner proves by a preponderance of the evidence, that the employer is in default to the Old Fund or has liability to the uninsured fund or is in policy default or has otherwise failed to maintain mandatory workers' compensation coverage.

(d) Notwithstanding any provision of this code to the contrary, the commissioner shall have the authority to waive penalty and interest accrued on moneys due the Old Fund. The enactment of the provisions of this subsection shall be applied retrospectively to January 1, 2006, and may not be construed to require the commissioner to adjust or otherwise modify any agreements reached with regard to the payment of penalty or interest since that date.

(e) Notwithstanding any provision of this code to the contrary, the Insurance Commissioner may compromise and settle any claims for moneys due to the Old Fund or the Uninsured Employer Fund. Information regarding settlements is subject to chapter twenty-nine-b of this code. The commissioner shall submit to the President of the Senate, the Speaker of the House of Delegates and the Legislative Auditor an annual report summarizing the settlements into which he or she has entered pursuant to this subsection. The summary shall describe the parties involved, the total amount owed and portions paid, and the terms of the settlement.

WV Legislature

§33-2-23. Transfer of assets of the State Office of the National Flood Insurance Program.

Effective July 1, 2022, the assets of the State Office of the National Flood Insurance Program, which Office has been transferred to the Division of Emergency Management pursuant to §15-5-20b of this code, are hereby assigned and transferred to the Division of Emergency Management. The Director of the Division of Emergency Management may decline certain assets from being transferred pursuant to this section if he or she believes the assets are unnecessary for the proper operation of the State Office of the National Flood Insurance Program.

WV Legislature

§33-2-24. Authority of Insurance Commissioner to enforce No Surprises Act; administrative penalties; injunctive relief; regulatory assistance of other agencies; rulemaking; effective date.

(a) The Insurance Commissioner shall enforce the applicable provisions of the No Surprises Act (H.R. 133, Public Law 116-260) against health insurers, medical providers, and health care facilities.

(b) Whenever the Insurance Commissioner believes, from evidence satisfactory to him or her, that any insurer, medical provider, or health care facility is violating the applicable provisions of the No Surprises Act, the Commissioner may assess a fine, not to exceed $10,000 per violation, after notice and hearing pursuant to §33-2-13 of this code. In addition to the administrative penalty available in this subsection, the Insurance Commissioner may cause a complaint to be filed in the appropriate court of this state seeking to enjoin and restrain the insurer, medical provider, or health care facility from continuing the violation or engaging therein or doing any act in furtherance thereof.

(c) The Insurance Commissioner may, at his or her discretion, seek assistance from any other state government agency regarding regulatory enforcement of this section against medical providers or health care facilities. The Insurance Commissioner may also call upon the Attorney General for legal assistance and representation as provided by law.

(d) The Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to effectuate the provisions of this section.

(e) The provisions of this section shall become effective January 1, 2022.

WV Legislature