

FILED

2004 MAR 31 P 3: 48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4004

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

Passed March 13, 2004

In Effect Ninety Days from Passage

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FOR

H. B. 4004

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §33-2-15b and §33-2-15c; to amend said code by adding thereto a new section, designated §33-2-20; to amend and reenact §33-6A-4 of said code; to amend said code by adding thereto three new sections, designated §33-6A-4a, §33-6A-4b and §33-6A-4c; to amend said code by adding thereto a new section, designated §33-22-2a; to amend said code by adding thereto a new section, designated §33-23-2a; to amend said code by adding thereto a new section, designated §33-24-4b; to amend said code by adding thereto a new section, designated §33-25-6a; to amend said code by adding thereto a new section, designated §33-25A-24b; to amend and reenact §33-41-1, §33-41-2 and §33-41-3 of said code; and to amend said code by adding thereto nine new sections, designated §33-41-4, §33-41-5, §33-41-6, §33-41-7, §33-41-8, §33-41-9, §33-41-10, §33-41-11 and §33-41-12, all relating to insurance

generally; requiring the insurance commissioner to submit a report to the legislature on the impact of third party causes of actions on rates and availability and to make recommendations; authorizing the commissioner to request information from insurers; providing that certain information provided by insurers is not subject to disclosure; requiring the insurance commissioner to submit a report to the legislature on the office of the consumer advocate; requiring the commissioner to make recommendations regarding the office of the consumer advocate; permitting additional reasons for nonrenewal of automobile liability or physical damage policies; requiring the submission of withdrawal plans in certain instances; providing that a certain percentage of existing policies or any policies issued or renewed after the effective date of the bill may be nonrenewed by an insurer for any reason with proper notice to the insured; providing that a certain percentage of policies may be nonrenewed for underwriting reasons; allowing insurers to elect a method of nonrenewal; requiring renewal in certain instances when there are restrictive endorsements; authorizing the commissioner of insurance to act regarding withdrawal of insurers from the state; authorizing the commissioner to allow certain insurers to withdraw from the state; requiring insurers and the insurance commissioner to submit information regarding the impact of legislation on rates and availability; prevention and investigation of insurance fraud generally; subjecting farmers' mutual insurance companies, fraternal benefit societies, certain hospital, medical, dental and health services corporations, health care corporations, and health maintenance organizations to insurance fraud provisions; creating the West Virginia insurance fraud prevention act; legislative intent; defining terms; requiring fraud warning on forms; use of special assistant prosecutor; establishing an insurance fraud unit within agency of insurance commissioner; authorizing promulgation of rules; establishing powers and duties of the unit; establishing investigative powers and procedures; providing confidentiality of fraud unit records; immunity for providing information provided to law enforcement regarding fraud; exceptions; creating offense of insurance fraud; establishing penalties and fines; authorizing prosecution for insurance fraud; authorizing fraud unit attorneys to act as special prosecutors at request of county

prosecutors; specifying duties of insurers; creating misdemeanor and felony offenses for the commission of fraudulent acts; creating civil penalties; granting authority to commissioner to administratively sanction regulated persons and insureds for violations of the article; and exceptions and immunities.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto two new sections designated § 33-2-15b and § 33-2-15c; that said code be amended by adding thereto a new section, designated §33-2-20; that §33-6A-4 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §33-6A-4a, §33-6A-4b and §33-6A-4c; that said code be amended by adding thereto a new section, designated §33-22-2a; that said code be amended by adding thereto a new section, designated §33-23-2a; that said code be amended by adding thereto a new section, designated §33-24-4b; that said code be amended by adding thereto a new section, designated §33-25-6a; that said code be amended by adding thereto a new section, designated §33-25A-24b; that §33-41-1, §33-41-2 and §33-41-3 of said code be amended and reenacted; and that said code be amended by adding thereto nine new sections, designated §33-41-4, §33-41-5, §33-41-6, §33-41-7, §33-41-8, §33-41-9, §33-41-10, §33-41-11 and §33-41-12, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

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

- 1 (a) By the first of February, two thousand five, the commis-
- 2 sioner shall submit to the Legislature a report on third party
- 3 causes of action;

- 4 (b) The report shall contain the following information:

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

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

11 (3) A summary of the types of data which the commissioner
12 utilized in preparing the analysis: *Provided*, That the commis-
13 sioner will not disclose information which is otherwise confi-
14 dential: *Provided, further*, That if the commissioner is unable
15 to obtain data which he or she considers necessary to preparing
16 a full analysis, the commissioner shall state in the report:

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

19 (B) Recommendations or proposed legislation for facilitat-
20 ing the collection of necessary data and protecting proprietary
21 information;

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

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

28 (c) For purpose of preparing the report, the commissioner
29 may request from companies authorized to conduct business in
30 this state any information that he or she believes is necessary to
31 determine the economic effect of third-party lawsuits on
32 insurance premiums. The companies shall not be required to
33 provide the information. Any information which the company
34 agrees to provide, shall be considered confidential by law and

35 privileged, is exempt from disclosure pursuant to chapter
36 twenty-nine-b of this code, is not open to public inspection, is
37 not subject to subpoena, and is not subject to discovery or
38 admissible in evidence in any criminal, private civil or adminis-
39 trative action and is not subject to production pursuant to court
40 order. Notwithstanding any other provisions in this section,
41 while the commissioner is to provide his or her general conclu-
42 sions based upon the review of the data, the commissioner is
43 not to disclose the information in a manner so as to violate the
44 confidentiality provisions of this section.

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

1 (a) By the first of February, two thousand five, the commis-
2 sioner shall submit to the Legislature a report relating to the
3 office of the consumer advocate.

4 (b) The report shall contain the following information:

5 (1) An overview of the function of the office of the con-
6 sumer advocacy and how the office addresses consumer
7 complaints;

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

10 (3) Statistics reflecting the number of consumer complaints
11 and types handled by the office from the first of January two
12 thousand one until the first of January two thousand four;

13 (4) The number of states which have consumer advocates
14 and the lines of insurance for which the advocates are autho-
15 rized to act on behalf of consumers;

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

19 (6) Based upon the findings and recommendations, of the
20 commissioner, and if the findings so suggest, proposed legisla-
21 tion for expanding the office of the consumer advocate to other
22 lines of insurance.

ARTICLE 2. INSURANCE COMMISSIONER.

**§33-2-20. Authority of commission to allow withdrawal of insur-
ance carriers from doing business in the state.**

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

7 (1) The insurer has submitted and received approval from
8 the commissioner of a withdrawal plan: and

9 (2) The insurer demonstrates to the satisfaction of the
10 commissioner that allowing the insurer to withdraw would be
11 in the best interest of the insurer. its policyholders and the
12 citizens of this state.

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

19 (c) The commissioner shall promulgate rules pursuant to
20 chapter twenty-nine-a of this code setting forth the criteria for
21 withdrawal plans.

**ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE
LIABILITY POLICIES.**

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

1 (a) No insurer shall fail to renew an outstanding automobile
2 liability or physical damage insurance policy unless the
3 nonrenewal is preceded by at least forty-five days advance
4 notice to the named insured of the insurer's election not to
5 renew the policy: *Provided*, That subject to this section, nothing
6 contained in this article shall be construed to prevent an insurer
7 from refusing to issue an automobile liability or physical
8 damage insurance policy upon application to the insurer, nor
9 shall any provision of this article be construed to prevent an
10 insurer from refusing to renew a policy upon expiration, except
11 as to the notice requirements of this section, and except further
12 as to those applicants lawfully submitted pursuant to the West
13 Virginia assigned risk plan.

14 (b) An insurer may not fail to renew an outstanding
15 automobile liability or physical damage insurance policy which
16 has been in existence for two consecutive years or longer except
17 for the following reasons:

18 (1) The named insured fails to make payments of premium
19 for the policy or any installment of the premium when due;

20 (2) The policy is obtained through material misrepresenta-
21 tion;

22 (3) The insured violates any of the material terms and
23 conditions of the policy;

24 (4) The named insured or any other operator, either residing
25 in the same household or who customarily operates an automo-
26 bile insured under the policy;

27 (A) Has had his or her operator's license suspended or
28 revoked during the policy period; or

29 (B) Is or becomes subject to a physical or mental condition
30 that prevents the insured from operating a motor vehicle, and
31 the individual cannot produce a certificate from a physician
32 testifying to his or her ability to operate a motor vehicle;

33 (5) The named insured or any other operator, either residing
34 in the same household or who customarily operates an automo-
35 bile insured under the policy, is convicted of or forfeits bail
36 during the policy period for any of the following reasons:

37 (A) Any felony or assault involving the use of a motor
38 vehicle;

39 (B) Negligent homicide arising out of the operation of a
40 motor vehicle;

41 (C) Operating a motor vehicle while under the influence of
42 intoxicating liquor or of any narcotic drug;

43 (D) Leaving the scene of a motor vehicle accident in which
44 the insured is involved without reporting it as required by law;

45 (E) Theft of a motor vehicle or the unlawful taking of a
46 motor vehicle; or

47 (F) Making false statements in an application for a motor
48 vehicle operator's license;

49 (6) The named insured or any other operator, either residing
50 in the same household or who customarily operates an automo-
51 bile insured under the policy, is convicted of or forfeits bail
52 during the policy period for two or more moving traffic
53 violations committed within a period of twelve months, each of
54 which results in three or more points being assessed on the

55 driver's record by the division of motor vehicles, whether or not
56 the insurer renewed the policy without knowledge of all of the
57 violations: *Provided*, That an insurer that makes an election
58 pursuant to section four-b of this article to issue all nonrenewal
59 notices pursuant to this section, may nonrenew an automobile
60 liability or physical damage insurance policy if the named
61 insured, or any other operator, either residing in the same
62 household or who customarily operates an automobile insured
63 under the policy is convicted of or forfeits bail during the policy
64 period for two or more moving traffic violations committed
65 within a period of twenty-four months, each of which occurs on
66 or after the first day of July, two thousand four and after the
67 date that the insurer makes an election pursuant to section four-
68 b of this article, and results in three or more points being
69 assessed on the driver's record by the division of motor
70 vehicles, whether or not the insurer renewed the policy without
71 knowledge of all of the violations. Notice of any nonrenewal
72 made pursuant to this subdivision shall be mailed to the named
73 insured either during the current policy period or during the
74 first full policy period following the date that the second
75 moving traffic violation is recorded by the division of motor
76 vehicles;

77 (7) The named insured or any other operator either residing
78 in the same household or who customarily operates an automo-
79 bile insured under the policy has had a second at-fault motor
80 vehicle accident within a period of twelve months, whether or
81 not the insurer renewed the policy without knowledge of all of
82 the accidents: *Provided*, That an insurer that makes an election
83 pursuant to section four-b of this article to issue all nonrenewal
84 notices pursuant to this section, may non-renew an automobile
85 liability or physical damage insurance policy under this
86 subsection if the named insured or any other operator either
87 residing in the same household or who customarily operates an
88 automobile insured under such policy has had two at-fault
89 motor vehicle accidents within a period of thirty-six months,

90 each of which occurs after the first day of July, two thousand
91 four and after the date that the insurer makes an election
92 pursuant to section four-b of this article, and results in a claim
93 paid by the insurer for each accident, whether or not the insurer
94 renewed the policy without knowledge of all of the accidents.
95 Notice of any nonrenewal made pursuant to this subsection
96 shall be mailed to the named insured either during the current
97 policy period or during the first full policy period following the
98 date of the second accident; or

99 (8) The insurer ceases writing automobile liability or
100 physical damage insurance policies throughout the state after
101 submission to and approval by the commissioner of a with-
102 drawal plan or discontinues operations within the state pursuant
103 to a withdrawal plan approved by the commissioner.

104 (c) An insurer that makes an election pursuant to section
105 four-b of this article to issue all nonrenewal notices pursuant to
106 this section shall not fail to renew an automobile liability or
107 physical damage insurance policy when an operator other than
108 the named insured has violated the provisions of subdivision (6)
109 or (7), subsection (b) of this section, if the named insured, by
110 restrictive endorsement, specifically excludes the operator who
111 violated the provision. An insurer issuing a nonrenewal notice
112 informing the named insured that the policy will be nonrenewed
113 for the reason that an operator has violated the provisions of
114 subdivision (6) or (7), subsection (b) of this section, shall at that
115 time inform the named insured of his or her option to specifi-
116 cally exclude the operator by restrictive endorsement and shall
117 further inform the named insured that upon obtaining the
118 restrictive endorsement, the insurer will renew the policy or
119 rescind the nonrenewal absent the existence of any other basis
120 for nonrenewal set forth in this section.

121 (d) A notice provided under this section shall state the
122 specific reason or reasons for nonrenewal and shall advise the

123 named insured that nonrenewal of the policy for any reason is
124 subject to a hearing and review as provided for in section five
125 of this article. Cost of the hearing shall be assessed against the
126 losing party but shall not exceed seventy-five dollars. The
127 notice must also advise the insured of possible eligibility for
128 insurance through the West Virginia assigned risk plan.

129 (e) Notwithstanding the provisions of subsection (a) of this
130 section, the insurer shall reinstate any automobile liability or
131 physical damage insurance policy that has not been renewed
132 due to the insured's failure to pay the renewal premium when
133 due if:

134 (1) None of the other grounds for nonrenewal as set forth in
135 of this section exist; and

136 (2) The insured makes an application for reinstatement
137 within forty-five days of the original expiration date of the
138 policy. If a policy is reinstated as provided for in this paragraph,
139 then the coverage afforded shall not be retroactive to the
140 original expiration date of the policy: *Provided*, That such
141 policy shall be effective on the reinstatement date at the current
142 premium levels offered by the company and shall not be
143 afforded the protections of this section relating to renewal of an
144 outstanding automobile liability or physical damage insurance
145 policy that has been in existence for at least two consecutive
146 years.

**§33-6A-4a. Alternative method for nonrenewal for automobile
liability and physical damage insurance.**

1 (a) On or after the first day of July, two thousand four, an
2 insurer may nonrenew an automobile liability or physical
3 damage insurance policy for any reason which is consistent
4 with its underwriting standards.

5 (b) Notwithstanding any other provisions in this section,
6 race, religion, nationality, ethnic group, age, sex, marital status,
7 or other reason prohibited by the provisions of this chapter may
8 not be considered as a reason for nonrenewal;

9 (c) Notwithstanding the provisions of section four of this
10 article, a nonrenewal may only be issued pursuant to the
11 provisions of this section upon forty-five days advance notice
12 to the named insured of the insurer's election not to renew the
13 policy.

14 (d) The total number of nonrenewal notices issued each
15 year, commencing on the first day of July, two thousand four,
16 by the insurer, resulting in nonrenewal, pursuant to this section
17 may not exceed one percent per year of the total number of the
18 policies of the insurer in force at the end of the previous
19 calendar year in this state: *Provided*, That the total number of
20 nonrenewal notices issued each year to insureds within any
21 given county in this state resulting in nonrenewal may not
22 exceed one percent per year of the total number of the policies
23 of the insurer in force in that county at the end of the previous
24 calendar year: *Provided, however*, That an insurer may
25 nonrenew one policy per year in any county if the applicable
26 percentage limitation results in less than one policy.

27 (e) A notice issued pursuant to this section shall state the
28 specific reason or reasons for refusal to renew and shall advise
29 the named insured that nonrenewal of the policy for any reason
30 is subject to a hearing and review as provided for in section five
31 of this article: *Provided*, That the hearing shall relate to whether
32 the nonrenewal of the policy was issued for a discriminatory
33 reason, was based upon inadequate notice, an underwriting
34 standard by the commissioner found to be in violation of this
35 chapter or causes the insurer to exceed the percentage limita-
36 tions, or percentage limitations by county, of nonrenewal
37 notices set forth in this section. Cost of the hearing shall be

38 assessed against the losing party but shall not exceed seventy-
39 five dollars. The notice shall also advise the insured of possible
40 eligibility for insurance through the West Virginia assigned risk
41 plan.

42 (f) Each insurer licensed to write automobile liability and
43 physical damage insurance policies in this state shall file with
44 the commissioner a copy of its underwriting standards, includ-
45 ing any amendments or supplements. The commissioner shall
46 review and examine the underwriting standards to ensure that
47 they are consistent with generally accepted underwriting
48 principles. The underwriting standards filed with the commis-
49 sioner shall be considered confidential by law and privileged,
50 are exempt from disclosure pursuant to chapter twenty-nine-b
51 of this code, are not open to public inspection, are not subject
52 to subpoena, and are not subject to discovery or admissible in
53 evidence in any criminal, private civil or administrative action
54 and are not subject to production pursuant to court order. The
55 commissioner shall promulgate legislative rules pursuant to
56 chapter twenty-nine-a of this code to implement the provisions
57 of this section.

58 (g) Each insurer that has elected to issue nonrenewal
59 notices pursuant to the percentage limitations provided in this
60 section shall report to the commissioner, on a form prescribed
61 by the commissioner, on or before the thirtieth day of Septem-
62 ber of each year the total number of nonrenewal notices issued
63 in this state and in each county of this state for the preceding
64 year. The insurer shall also report to the commissioner the
65 specific reason or reasons for the nonrenewals by county which
66 have been issued pursuant to this section.

§33-6A-4b. Manner of making election relating to nonrenewals.

1 (a) Each insurer licensed to write automobile liability or
2 physical damage insurance policies in this state, as of the first

3 day of July, two thousand four, may elect to issue all
4 nonrenewal notices either pursuant to section four or section
5 four-a of this article. Each insurer may notify the commissioner
6 of its election any time after the first day of July, two thousand
7 four, and shall remain bound by the election for a period of five
8 years. For each subsequent five-year period each insurer shall
9 notify the commissioner of its election to issue all nonrenewal
10 notices either pursuant to section four or section four-a of this
11 article.

12 (1) If no election is made by the first day of July, two
13 thousand four, then, until the first day of July, two thousand
14 five, the insurer shall continue to issue all nonrenewal notices
15 pursuant to the existing nonrenewal provisions in section four
16 prior to the amendments enacted therein by the acts of the
17 Seventy-Sixth Legislature during the second session, two
18 thousand four.

19 (2) As of the first day of July, two thousand five, each
20 insurer licensed to write automobile liability or physical
21 damage insurance policies in this state, and that has not
22 previously made an election under this section, shall elect to
23 issue all nonrenewal notices either pursuant to section four or
24 section four-a of this article. Each insurer which has not
25 previously made an election must notify the commissioner of its
26 election no later than the first day of July, two thousand five,
27 and shall remain bound by the election for a period of five
28 years. For each subsequent five-year period each insurer shall
29 notify the commissioner of its election to issue all nonrenewal
30 notices either pursuant to section four or section four-a of this
31 article.

32 (b) An insurer that is not licensed to write automobile
33 liability or physical damage insurance policies in this state, as
34 of the first day of July, two thousand four, but becomes licensed
35 to write such policies after that date shall, no later than two

36 years after the date the insurer becomes licensed to write such
37 policies, make an election to issue all nonrenewal notices either
38 pursuant to section four or section four-a of this article, and
39 shall notify the commissioner of its election. If the insurer
40 elects to issue all nonrenewal notices pursuant to section four-a
41 of this article, the total number of nonrenewals may not exceed
42 the percentage limitations set forth in section four-a of this
43 article. An insurer first becoming licensed to issue automobile
44 liability and physical damage insurance policies in this state
45 after the first day of July, two thousand four, shall be bound by
46 its election for a period of five years, and for each subsequent
47 five-year period shall notify the commissioner of its election to
48 issue all nonrenewal notices either pursuant to section four or
49 section four-a of this article.

50 (c) Notwithstanding any provision of this article to the
51 contrary, a named insured by restrictive endorsement may
52 specifically exclude from automobile liability or physical
53 damage insurance policy an operator who has violated the
54 provisions of subdivision (6) or (7), subsection (b), section four
55 of this article.

§33-6A-4c. Report to the Legislature.

1 (a) By the first day of January, two thousand nine the
2 commissioner shall submit a report to the Legislature. The
3 report shall contain the following:

4 (1) An analysis of the impact of legislation enacted during
5 the two thousand four legislative session upon rates and
6 insurance availability in the state;

7 (2) Statistics reflecting the rate history of insurers conduct-
8 ing business in West Virginia from the first day of July two
9 thousand four until the first day of July, two thousand eight;

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2a. Applicability of insurance fraud prevention act.

- 1 Notwithstanding any provision of this code to the contrary,
- 2 article forty-one of this chapter is applicable to farmers' mutual
- 3 fire insurance companies.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2a. Applicability of insurance fraud prevention act

- 1 Notwithstanding any provision of this code to the contrary,
- 2 article forty-one of this chapter is applicable to fraternal benefit
- 3 societies.

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

§33-24-4b. Applicability of insurance fraud prevention act

- 1 Notwithstanding any provision of this code to the contrary,
- 2 article forty-one of this chapter is applicable to hospital service
- 3 corporations, medical service corporations, dental service
- 4 corporations and health service corporations.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6a. Applicability of insurance fraud prevention act

- 1 Notwithstanding any provision of this code to the contrary,
- 2 article forty-one of this chapter is applicable to health care
- 3 corporations.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24b. Applicability of insurance fraud prevention act.

- 1 Notwithstanding any provision of this code to the contrary,
- 2 article forty-one of this chapter is applicable to health maintenance organizations.
- 3

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.**§33-41-1. Short title; legislative findings and purpose.**

1 (a) This article may be cited as the “West Virginia Insur-
2 ance Fraud Prevention Act”.

3 (b) The Legislature finds that the business of insurance
4 involves many transactions of numerous types that have
5 potential for fraud and other illegal activities. This article is
6 intended to permit use of the expertise of the commissioner to
7 investigate and help prosecute insurance fraud and other crimes
8 related to the business of insurance more effectively, and to
9 assist and receive assistance from state, local and federal law-
10 enforcement and regulatory agencies in enforcing laws prohibit-
11 ing crimes relating to the business of insurance.

§33-41-2. Definitions.

1 As used in this article:

2 (1) “Benefits” mean money payments, goods, services or
3 other thing of value paid in response to a claim filed with an
4 insurer based upon a policy of insurance;

5 (2) “Business of insurance” means the writing of insurance
6 or the reinsuring of risks by an insurer, including acts necessary
7 or incidental to writing insurance or reinsuring risks and the
8 activities of persons who act as or are officers, directors, agents
9 or employees of insurers, or who are other persons authorized
10 to act on their behalf;

11 (3) “Claim” means an application or request for payment or
12 benefits provided under the terms of a policy of insurance;

13 (4) “Commissioner” means the insurance commissioner of
14 West Virginia or his or her designee;

15 (5) "Health care provider" means a person, partnership,
16 corporation, facility or institution licensed by, or certified in,
17 this state or another state, to provide health care or professional
18 health care services, including, but not limited to, a physician,
19 osteopathic physician, hospital, dentist, registered or licensed
20 practical nurse, optometrist, pharmacist, podiatrist, chiroprac-
21 tor, physical therapist or psychologist;

22 (6) "Insurance" means a contract or arrangement in which
23 a person undertakes to:

24 (A) Pay or indemnify another person as to loss from certain
25 contingencies called "risks," including through reinsurance;

26 (B) Pay or grant a specified amount or determinable benefit
27 to another person in connection with ascertainable risk contin-
28 gencies;

29 (C) Pay an annuity to another person; or

30 (D) Act as surety.

31 (7) "Insurer" means a person entering into arrangements or
32 contracts of insurance or reinsurance. Insurer includes, but is
33 not limited to, any domestic or foreign stock company, mutual
34 company, mutual protective association, farmers' mutual fire
35 companies, fraternal benefit society, reciprocal or
36 interinsurance exchange, nonprofit medical care corporation,
37 nonprofit health care corporation, nonprofit hospital service
38 association, nonprofit dental care corporation, health mainte-
39 nance organization, captive insurance company, risk retention
40 group or other insurer, regardless of the type of coverage
41 written, benefits provided or guarantees made by each. A
42 person is an insurer regardless of whether the person is acting
43 in violation of laws requiring a certificate of authority or
44 regardless of whether the person denies being an insurer;

45 (8) "Person" means an individual, a corporation, a limited
46 liability company, a partnership, an association, a joint stock
47 company, a trust, trustees, an unincorporated organization, or
48 any similar business entity or any combination of the foregoing.
49 "Person" also includes hospital service corporations, medical
50 service corporations and dental service corporations as defined
51 in article twenty-four of this chapter, health care corporations
52 as defined in article twenty-five of this chapter, or a health
53 maintenance organization organized pursuant to article twenty-
54 five-a of this chapter;

55 (9) "Policy" means an individual or group policy, group
56 certificate, contract or arrangement of insurance or reinsurance
57 affecting the rights of a resident of this state or bearing a
58 reasonable relation to this state, regardless of whether delivered
59 or issued for delivery in this state;

60 (10) "Reinsurance" means a contract, binder of coverage
61 (including placement slip) or arrangement under which an
62 insurer procures insurance for itself in another insurer as to all
63 or part of an insurance risk of the originating insurer;

64 (11) "Statement" means any written or oral representation
65 made to any person, insurer or authorized agency. A statement
66 includes, but is not limited to, any oral report or representation;
67 any insurance application, policy, notice or statement; any proof
68 of loss, bill of lading, receipt for payment, invoice, account,
69 estimate of property damages, or other evidence of loss, injury
70 or expense; any bill for services, diagnosis, prescription,
71 hospital or doctor record, X ray, test result or other evidence of
72 treatment, services or expense; and any application, report,
73 actuarial study, rate request or other document submitted or
74 required to be submitted to any authorized agency. A statement
75 also includes any written or oral representation recorded by
76 electronic or other media; and

77 (12) "Unit" means the insurance fraud unit established
78 pursuant to the provisions of this article acting collectively or
79 by its duly authorized representatives.

§33-41-3. Fraud warning authorized; statement required of nonadmitted insurers.

1 (a) Claims forms and applications for insurance, regardless
2 of the form of transmission, may contain the following warning
3 or a substantially similar caveat:

4 "Any person who knowingly presents a false or fraudulent
5 claim for payment of a loss or benefit or knowingly presents
6 false information in an application for insurance is guilty of a
7 crime and may be subject to fines and confinement in prison."

8 (b) The lack of a warning as authorized by the provisions of
9 subsection (a) of this section does not constitute a defense in
10 any prosecution for a fraudulent or illegal act nor shall it
11 constitute the basis for any type of civil cause of action.

12 (c) Policies issued by nonadmitted insurers pursuant to
13 article twelve-c of this chapter shall contain a statement
14 disclosing the status of the insurer to do business in the state
15 where the policy is delivered or issued for delivery or the state
16 where coverage is in force. The requirement of this subsection
17 may be satisfied by a disclosure specifically required by section
18 five, article twelve-c of this chapter; section nine, article thirty-
19 two of this chapter; and section eighteen, article thirty-two of
20 this chapter.

§33-41-4. Authority of the commissioner; use of special assistant prosecutors.

1 (a) The commissioner may investigate suspected criminal
2 acts relating to the business of insurance as authorized by the
3 provisions of this article.

4 (b) If the prosecuting attorney of the county in which a
5 criminal violation relating to the business of insurance occurs
6 determines that his or her office is unable to take appropriate
7 action, he or she may petition the appropriate circuit court for
8 the appointment of a special prosecutor or special assistant
9 prosecutor from the West Virginia Prosecuting Attorney
10 Institute pursuant to the provisions of section six, article four,
11 chapter seven of this code. Notwithstanding the provisions of
12 that section, attorneys employed by the commissioner and
13 assigned to the insurance fraud unit created by the provisions of
14 section eight of this article may prosecute or assist in the
15 prosecution of violations of the criminal laws of this state
16 related to the business of insurance and may act as special
17 prosecutors or special assistant prosecutors in those cases if
18 assistance is sought by the prosecuting attorney or special
19 prosecutor assigned by the institute to prosecute those matters.

20 (c) Funds allocated for insurance fraud prevention may be
21 dispersed by the commissioner, at his or her discretion, for the
22 purpose of insurance fraud enforcement as authorized by the
23 provisions of this code.

24 (d) The Insurance Fraud Unit authorized by the provisions
25 of section eight of this article may assist federal law enforce-
26 ment agencies, the West Virginia state police, the state fire
27 marshal, municipal police departments and the sheriffs of the
28 counties in West Virginia in investigating crimes related to the
29 business of insurance.

30 (e) The commissioner may conduct public outreach,
31 education, and awareness programs on the costs of insurance
32 fraud to the public.

**§33-41-5. Reporting of insurance fraud or criminal offenses
otherwise related to the business of insurance.**

1 (a) A person engaged in the business of insurance having
2 knowledge or a reasonable belief that fraud or another crime
3 related to the business of insurance is being, will be or has been
4 committed shall provide to the commissioner the information
5 required by, and in a manner prescribed by, the commissioner.

6 (b) The commissioner may prescribe a reporting form to
7 facilitate reporting of possible fraud or other offenses related to
8 the business of insurance for use by persons other than those
9 persons referred to in subsection (a) of this section.

§33-41-6. Immunity from liability.

1 (a) There shall be no civil liability imposed on and no cause
2 of action shall arise from a person's furnishing information
3 concerning suspected or anticipated fraud relating to the
4 business of insurance, if the information is provided to or
5 received from:

6 (1) The commissioner or the commissioner's employees,
7 agents or representatives;

8 (2) Federal, state, or local law-enforcement or regulatory
9 officials or their employees, agents or representatives;

10 (3) A person involved in the prevention and detection of
11 insurance fraud or that person's agents, employees or represen-
12 tatives; or

13 (4) The national association of insurance commissioners or
14 its employees, agents or representatives.

15 (b) The provisions of subsection (a) of this section are not
16 applicable to materially incorrect statements made maliciously
17 or fraudulently by a person designated a mandated reporter
18 pursuant to the provisions of subsection (a), section five of this
19 article or made in reckless disregard to the truth or falsity of the

20 statement by those not mandated to report. In an action brought
21 against a person for filing a report or furnishing other informa-
22 tion concerning an alleged insurance fraud, the party bringing
23 the action shall plead with specificity any facts supporting the
24 allegation that subsection (a) of this section does not apply
25 because the person filing the report or furnishing the incorrect
26 information did so maliciously in the case of a mandated
27 reporter or in the case of a person not designated a mandated
28 reporter, in reckless disregard for the truth or falsity of the
29 statement.

30 (c) Nothing in this article shall be construed to limit,
31 abrogate or modify existing statutes or case law applicable to
32 the duties or liabilities of insurers regarding bad faith or unfair
33 trade practices.

34 (d) This section does not abrogate or modify common law
35 or statutory privileges or immunities.

§33-41-7. Confidentiality.

1 (a) Documents, materials or other information in the
2 possession or control of the office of the insurance commis-
3 sioner that are provided pursuant to section six of this article or
4 obtained by the commissioner in an investigation of alleged
5 fraudulent acts related to the business of insurance shall be
6 confidential by law and privileged, shall not be subject to the
7 provisions of chapter twenty-nine-b of this code, shall not be
8 open to public inspection, shall not be subject to subpoena, and
9 shall not be subject to discovery or admissible in evidence in
10 any private civil action. The commissioner may use the
11 documents, materials or other information in the furtherance of
12 any regulatory or legal action brought as a part of the commis-
13 sioner's official duties. The commissioner may use the docu-
14 ments, materials or other information if they are required for
15 evidence in criminal proceedings or other action by the state or

16 federal government and in such context may be discoverable as
17 ordered by a court of competent jurisdiction exercising its
18 discretion.

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

26 (c) In order to assist in the performance of the commis-
27 sioner's duties, the commissioner:

28 (1) May share documents, materials or other information,
29 including the confidential and privileged documents, materials
30 or information subject to subsection (a) of this section with
31 other state, federal and international regulatory agencies, with
32 the national association of insurance commissioners and its
33 affiliates and subsidiaries, and with local, state, federal and
34 international law-enforcement authorities, provided that the
35 recipient agrees to maintain the confidentiality and privileged
36 status of the document, material or other information;

37 (2) May receive documents, materials or information,
38 including otherwise confidential and privileged documents,
39 materials or information, from the national association of
40 insurance commissioners and its affiliates and subsidiaries, and
41 from regulatory and law-enforcement officers of other foreign
42 or domestic jurisdictions, and shall maintain as confidential or
43 privileged any document, material or information received with
44 notice or the understanding that it is confidential or privileged
45 under the laws of the jurisdiction that is the source of the
46 document, material or information; and

47 (3) May enter into agreements governing sharing and use of
48 information including the furtherance of any regulatory or legal
49 action brought as part of the recipient's official duties.

50 (d) No waiver of any applicable privilege or claim of
51 confidentiality in the documents, materials or information shall
52 occur as a result of disclosure to the commissioner under this
53 section or as a result of sharing as authorized in subsection (c)
54 of this section.

55 (e) Nothing in this section shall prohibit the commissioner
56 from providing information to or receiving information from
57 any local, state, federal or international law-enforcement
58 authorities, including any prosecuting authority; or from
59 complying with subpoenas or other lawful process in criminal
60 actions; or as may otherwise be provided in this article.

61 (f) Nothing in this article may be construed to abrogate or
62 limit the attorney-client or work product privileges existing at
63 common law or established by statute or court rule.

**§33-41-8. Creation of insurance fraud unit; purpose; duties;
personnel qualifications.**

1 (a) There is established the West Virginia insurance fraud
2 unit within the office of the insurance commissioner of West
3 Virginia. The commissioner may employ full-time supervisory,
4 legal and investigative personnel for the unit, who shall be
5 qualified by training and experience in the areas of detection,
6 investigation or prosecution of fraud within and against the
7 insurance industry to perform the duties of their positions. The
8 director of the fraud unit shall be a full-time position and shall
9 be appointed by the commissioner and serve at his or her will
10 and pleasure. The commissioner shall provide office space,
11 equipment, supplies, clerical and other staff that is necessary for
12 the unit to carry out its duties and responsibilities under this
13 article.

14 (b) The fraud unit may in its discretion:

15 (1) Initiate inquiries and conduct investigations when the
16 unit has cause to believe violations of the provisions of this
17 chapter or the provisions of article three, chapter sixty-one of
18 this code relating to the business of insurance have been or are
19 being committed;

20 (2) Review reports or complaints of alleged fraud related to
21 the business of insurance activities from federal, state and local
22 law-enforcement and regulatory agencies, persons engaged in
23 the business of insurance and the general public to determine
24 whether the reports require further investigation; and

25 (3) Conduct independent examinations of alleged fraudu-
26 lent activity related to the business of insurance and undertake
27 independent studies to determine the extent of fraudulent
28 insurance acts.

29 (c) The insurance fraud unit may:

30 (1) Employ and train personnel to achieve the purposes of
31 this article and to employ legal counsel, investigators, auditors
32 and clerical support personnel and other personnel as the
33 commissioner determines necessary from time to time to
34 accomplish the purposes of this article;

35 (2) Inspect, copy or collect records and evidence;

36 (3) Serve subpoenas issued by grand juries and trial courts
37 in criminal matters;

38 (4) Share records and evidence with federal, state or local
39 law-enforcement or regulatory agencies, and enter into inter-
40 agency agreements;

41 (5) Make criminal referrals to the county prosecutors;

42 (6) Conduct investigations outside this state. If the informa-
43 tion the insurance fraud unit seeks to obtain is located outside
44 this state, the person from whom the information is sought may
45 make the information available to the insurance fraud unit to
46 examine at the place where the information is located. The
47 insurance fraud unit may designate representatives, including
48 officials of the state in which the matter is located, to inspect
49 the information on behalf of the insurance fraud unit, and the
50 insurance fraud unit may respond to similar requests from
51 officials of other states;

52 (7) The fraud unit may initiate investigations and partici-
53 pate in the development of, and if necessary, the prosecution of
54 any health care provider, including a provider of rehabilitation
55 services, suspected of fraudulent activity related to the business
56 of insurance;

57 (8) Specific personnel, designated by the commissioner,
58 shall be permitted to operate vehicles owned or leased for the
59 state displaying Class A registration plates;

60 (9) Notwithstanding any provision of this code to the
61 contrary, specific personnel designated by the commissioner
62 may carry firearms in the course of their official duties after
63 meeting specialized qualifications established by the governor's
64 committee on crime, delinquency and correction, which shall
65 include the successful completion of handgun training provided
66 to law-enforcement officers by the West Virginia state police:
67 *Provided*, That nothing in this subsection shall be construed to
68 include any person designated by the commissioner as a
69 law-enforcement officers as that term is defined by the provi-
70 sions of section one, article twenty-nine, chapter thirty of this
71 code; and

72 (10) The insurance fraud unit shall not be subject to the
73 provisions of article nine-a, chapter six of this code and the

74 investigations conducted by the insurance fraud unit and the
75 materials placed in the files of the unit as a result of any such
76 investigation are exempt from public disclosure under the
77 provisions of chapter twenty-nine-b of this code.

§33-41-9. Other law-enforcement or regulatory authority.

1 This article does not:

2 (1) Preempt the authority or relieve the duty of other
3 law-enforcement or regulatory agencies to investigate, examine
4 and prosecute suspected violations of law;

5 (2) Prevent or prohibit a person from disclosing voluntarily
6 information concerning insurance fraud to a law-enforcement
7 or regulatory agency other than the insurance fraud unit; or

8 (3) Limit the powers granted elsewhere by the laws of this
9 state to the commissioner or his or her agents to investigate and
10 examine possible violations of law and to take appropriate
11 action against violators of law.

§33-41-10. Rules.

1 The insurance commissioner shall, pursuant to the provi-
2 sions of article three, chapter twenty-nine-a of this code,
3 promulgate such legislative rules as are necessary or proper to
4 carry out the purposes of this article.

§33-41-11. Fraudulent claims to insurance companies.

1 (a) Any person who knowingly and willfully and with
2 intent to defraud submits a materially false statement in support
3 of a claim for insurance benefits or payment pursuant to a
4 policy of insurance or who conspires to do so is guilty of a
5 crime and is subject to the penalties set forth in the provisions
6 of this section.

7 (b) Any person who commits a violation of the provisions
8 of subsection (a) of this section where the benefit sought
9 exceeds one thousand dollars in value is guilty of a felony and,
10 upon conviction thereof shall be confined in a correctional
11 facility for not less than one nor more than ten years, fined not
12 more than ten thousand dollars, or both or in the discretion of
13 the circuit court confined in a county or regional jail for not
14 more than one year and so fined.

15 (c) Any person who commits a violation of the provisions
16 of subsection (a) of this section where the benefit sought is one
17 thousand dollars or less in value, is guilty of a misdemeanor
18 and, upon conviction thereof, shall be confined in a county or
19 regional jail for not more than one year, fined not more than
20 two thousand five hundred dollars, or both.

21 (d) Any person convicted of a violation of this section is
22 subject to the restitution provisions of article eleven-a, chapter
23 sixty-one of this code.

24 (e) The circuit court may award to the unit or other law
25 enforcement agency investigating a violation of this section or
26 other criminal offense related to the business of insurance its
27 cost of investigation.

§33-41-12. Civil penalties; injunctive relief; employment disqualification.

1 A person or entity engaged in the business of insurance or
2 a person or entity making a claim against an insurer who
3 violates any provision of this article may be subject to the
4 following:

5 (1) Where applicable, suspension or revocation of license
6 or certificate of authority or a civil penalty of up to ten thousand
7 dollars per violation, or where applicable, both. Suspension
8 or revocation of license or certificate of authority or

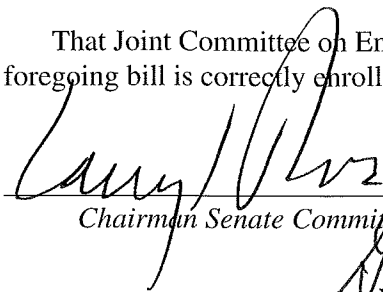
9 imposition of civil penalties may be pursuant to an order of the
10 commissioner issued pursuant to the provisions of section
11 thirteen, article two of this chapter. The commissioner's order
12 may require a person found to be in violation of this article to
13 make reasonable restitution to persons aggrieved by violations
14 of this article. The commissioner may assess a person sanc-
15 tioned pursuant to the provisions of this section the cost of
16 investigation;

17 (2) Notwithstanding any other provision of law, a civil
18 penalty imposed pursuant to the provisions of this section is
19 mandatory and not subject to suspension;

20 (3) A person convicted of a felony violation law reasonably
21 related to the business of insurance shall be disqualified from
22 engaging in the business of insurance; and

23 (4) The commissioner may apply for a temporary or
24 permanent injunction in any appropriate circuit court of this
25 state seeking to enjoin and restrain a person from violating or
26 continuing to violate the provisions of this article or rule
27 promulgated under this article, notwithstanding the existence of
28 other remedies at law. The circuit court shall have jurisdiction
29 of the proceeding and have the power to make and enter an
30 order or judgment awarding temporary or permanent injunctive
31 relief restraining any person from violating or continuing to
32 violate any provision of this article or rule promulgated under
33 the article as in its judgment is proper.

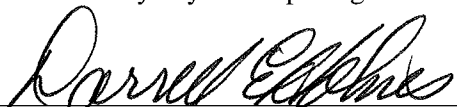
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

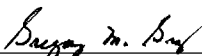

Chairman Senate Committee

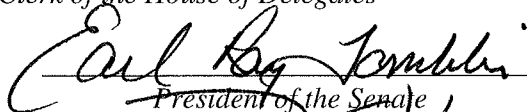

Chairman House Committee

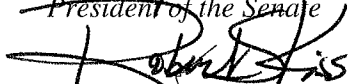
Originating in the House.

In effect ninety days 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 31st
day of March 2004


Governor

11/2/2004

Date

3/26/04

Time

3:50 pm