WEST VIRGINIA LEGISLATURE
FIFTH EXTRAORDINARY SESSION, 2005

ENROLLED

House Bill No. 501
(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed November 14, 2005

In Effect from Passage

Be it enacted by the Legislature of West Virginia:

That §23-2C-1, §23-2C-2, §23-2C-4, §23-2C-7, §23-2C-8, §23-2C-15, §23-2C-16 and §23-2C-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-2C-3a; and that §23-4B-1, §23-4B-2, §23-4B-3, §23-4B-4, §23-4B-5, §23-4B-7 and §23-4B-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.
§23-2C-1. Findings and purpose.

(a) The Legislature finds that:

(1) There is a long-term actuarial funding crisis in the state-run monopolistic workers’ compensation system;

(2) Similar short-term and long-term crises have been ongoing during the past two decades;

(3) During the current crisis, employers in West Virginia find it increasingly difficult to afford the rates charged by the Workers’ Compensation Commission for workers’ compensation coverage and that paying said rates adversely impacts employers’ ability to compete in a global economic environment;

(4) The cost of obtaining workers’ compensation coverage from the state system may result in many employers leaving the state;

(5) Employers’ access to competitive workers’ compensation rates and the resulting economic development benefit is of utmost importance to the citizens of West Virginia;

(6) A mechanism is needed to provide an enduring solution to this recurring workers’ compensation crisis;

(7) An employers’ mutual insurance company or a similar entity has proven to be a successful mechanism in other states for helping employers secure insurance and for stabilizing the insurance market;

(8) There is a substantial public interest in creating a method to provide a stable workers’ compensation insurance market in this state;
(9) The state-run workers' compensation program is a substantial actual and potential liability to the state;

(10) There is substantial public benefit in transferring certain actual and potential future liability of the state to the private sector and creating a stable self-sufficient entity which will be a potential source of workers' compensation coverage for employers in this state;

(11) A stable, financially viable insurer in the private sector will aid in providing a continuing source of insurance funds to compensate injured workers; and

(12) Because the public will greatly benefit from the formation of an employers' mutual insurance company, state efforts to encourage and support the formation of such an entity, including providing funding for the entity's initial capital, is in the clear public interest.

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

(1) A means for employers to obtain workers' compensation insurance that is reasonably available and affordable; and

(2) Compensation to employees of mutual policyholders who suffer work place injuries as defined in this chapter.

(c) The further purpose of this article is to transfer New Fund assets relating to the workers' compensation insurance business to the company, including a reasonable level of policyholder surplus, and for the company to assume the New Fund liabilities related to the transferred assets. It is the intent of this article to provide for the initial capitalization of the company to comply with and to meet the requirements of section 351 and related sections of the Internal Revenue Code.

(a) "Executive director" means the Executive Director of
the West Virginia Workers' Compensation Commission as
provided in section one-b, article one of this chapter.

(b) "Commission" means the West Virginia Workers'
Compensation Commission as provided by section one, article
one of this chapter.

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

(d) "Company" or "successor to the commission" means the
employers' mutual insurance company created pursuant to the
terms of this article.

(e) "Policy default" shall mean a policyholder that has
failed to comply with the terms of its workers' compensation
insurance policy and is consequently without workers' compen-
sation insurance coverage.

(f) "Industrial insurance" means insurance which provides
all compensation and benefits required by this chapter.

(g) "Insurer" includes:

(1) A self-insured employer; and

(2) A private carrier.

(h) "Industrial Council" means the advisory group estab-
lished in section five of this article.

(I) "Mutualization Transition Fund" shall be a fund over
which the State Treasurer is custodian. Moneys transferred or
otherwise payable to the Mutualization Transition Fund shall be
deposited in the State Treasury to the credit of the Mutualization Transition Fund. Disbursements shall be made from the Mutualization Transition Fund upon requisitions signed by the executive director, and, upon termination of the commission, the Insurance Commissioner, and shall be reasonably related to the legal, operational, consultative and human resource-related expenses associated with the establishment of the company and the transferring of personnel from the commission to the company.

(j) “New Fund” shall mean a fund owned and operated by the commission and, upon termination of the commission, the successor organization of the West Virginia Workers’ Compensation Commission and shall consist of those funds transferred to it from the Workers’ Compensation Fund and any other applicable funds. New Fund shall include all moneys due and payable to the Workers’ Compensation Fund for the quarters ending the thirtieth day of September, two thousand five, and the thirty-first day of December, two thousand five, which have not been collected by the Workers’ Compensation Fund as of the thirty-first day of December, two thousand five.

(k) “New Fund liabilities” shall mean all claims payment obligations (indemnity and medical expenses) for all claims, actual and incurred but not reported, for any claim with a date of injury or last exposure on or after the first day of July, two thousand five: Provided, That New Fund liabilities shall begin with claims payments becoming due and owing on said claims on or after the first day of January, two thousand six.

(l) “Old Fund” shall mean a fund held by the State Treasurer’s office consisting of those funds transferred to it from the Workers’ Compensation Fund or other sources and those funds due and owing the Workers’ Compensation Fund as of the thirtieth day of June, two thousand five, that are thereafter collected. The Old Fund and assets therein shall remain
property of the state and shall not novate or otherwise transfer to the company.

(m) "Old Fund liabilities" mean all claims payment obligations (indemnity and medical expenses), related liabilities and appropriate administrative expenses necessary for the administration of all claims, actual and incurred but not reported, for any claim with a date of injury or last exposure on or before the thirtieth day of June, two thousand five: Provided, That Old Fund liabilities shall include all claims payments for any claim, regardless of date of injury or last exposure, through the thirty-first day of December, two thousand five: Provided, however, That Old Fund liabilities shall include all claims with dates of injuries or last exposure prior to the first day of July, two thousand four, for bankrupt self-insured employers that had defaulted on their claims obligations which have been recognized by the commission in its actuarially determined liability number as of the thirtieth day of June, two thousand five.

(n) "Private carrier" means any insurer or the legal representative of an insurer authorized by the Insurance Commissioner to provide workers’ compensation insurance pursuant to this chapter and which maintains an office in the state. The term does not include a self-insured employer or private employers but shall include any successor to the commission.

(o) "Uninsured Employer Fund" means a fund held by the State Treasurer’s office consisting of those funds transferred to it from the Workers’ Compensation Fund and any other source. Disbursements from the Uninsured Employer Fund shall be upon requisitions signed by the Insurance Commissioner, and as otherwise set forth in an exempt legislative rule promulgated by the workers’ compensation board of managers.

(p) "Self-Insured Employer Guaranty Risk Pool" shall be a fund held by the State Treasurer’s office consisting of those
funds transferred to it from the guaranty pool created pursuant to 85 CSR §19 (2004) and any future funds collected through continued administration of that exempt legislative rule as administered by the Insurance Commissioner. Disbursements shall be made from the Self-Insured Employer Guaranty Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of the fund shall be as provided in 85 CSR §19 (2004).

(q) “Self-Insured Employer Security Risk Pool” shall be a fund held by the state’s Treasurer consisting of those funds paid into it through the Insurance Commissioner’s administration of 85 CSR §19 (2004). Disbursement from said fund shall be made from the Self-Insured Employer Security Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of the fund shall be as provided in 85 CSR §19: Provided, That said liabilities shall be limited to those self-insured employers who default on their claims obligations after the termination of the commission.

(r) “Private Carrier Guaranty Fund” shall be a fund held by the State Treasurer’s office consisting of funds deposited pursuant to this article. Disbursements shall be made from the Private Carrier Guaranty Fund upon requisitions signed by the Insurance Commissioner. The obligations of the fund shall be as provided in this article.

(s) “Assigned Risk Fund” shall be a fund held by the State Treasurer’s office consisting of funds deposited pursuant to this article. Disbursements shall be made from the Assigned Risk Fund upon requisitions signed by the Insurance Commissioner. The obligations of the fund shall be as provided in this article.

(t) “Comprehensive financial plan” shall mean the plan compiled by the director for acceptance by the Insurance Commissioner identifying and forecasting cash flows, funding
sources, debt terms and structures and scheduled amortization
and permanent resolution of all Old Fund liabilities. The
comprehensive financial plan shall provide for the retirement of
the revenue bonds authorized by article two-d of this chapter
and all realized and potential claims against the Old Fund shall
be fully reserved. The comprehensive financial plan may
include any other information the Insurance Commissioner may
require as a basis for managing the post-transition fiscal
soundness of the Old Fund.

§23-2C-3a. Employers’ mutual insurance company - additional
provisions enacted in November 2005.

(a) Notwithstanding any other provisions of this article to
the contrary, the employers’ mutual insurance company:

(1) May not be dissolved.

(2) May not transact such other kinds of property and
casualty insurance for which the company is otherwise qualified
under the provisions of this code prior to the first day of
January, two thousand nine.

(b) As soon as practical following the effective date of this
section, the company established pursuant to the provisions of
this article shall, through a vote of a majority of its provisional
board, file its amended articles of incorporation and amended
bylaws with the Insurance Commissioner and apply for a
license with the Insurance Commissioner to transact insurance
in this state. Notwithstanding any other provision of this code,
the Insurance Commissioner shall act on the documents within
fifteen days of the filing by the company.

(c) Notwithstanding any provision of subsection (g), section
three of this article to the contrary, in the event the Governor
certifies to the Legislature that revenue bonds issued pursuant
to article two-d of this chapter have been retired and that the
unfunded liability of the Old Fund has been paid or has been
provided for in its entirety, whichever occurs last, then:

(1) The premiums surcharge imposed by subdivision (2),
subsection (f), section three of this article shall not sunset and
shall continue to be remitted in accordance with the provisions
of said subsection; and

(2) The premiums surcharge imposed by subdivision (3),
subsection (f), section three of this article shall sunset and not
be collectible with respect to workers’ compensation insurance
premiums paid when the policy is renewed on or after the first
day of the month following the month in which the Governor
makes the certification.

(d) Except as may otherwise be provided in this subsection,
all provisions of section three of this article shall remain in full
force and effect.

§23-2C-4. Governance and organization.

(a) (1) The commission shall implement the initial forma-
tion and organization of the company as provided by this
article.

(2) From the inception of the company, until the first day of
January, two thousand six, the company shall be governed by
a provisional board of directors consisting of the three persons
on the executive committee of the workers’ compensation board
of managers and four members of the Legislature. Two mem-
bers of the West Virginia Senate and two members of the West
Virginia House of Delegates shall serve as advisory nonvoting
members of the board. The Governor shall appoint the legisla-
tive members to the board. No more than three of the legislative
members shall be of the same political party. The provisional
board shall have the authority to function as necessary to
establish the company and cause it to become operational,
including the right to contract on behalf of the company. Each
voting board member shall receive compensation of not more
than three hundred fifty dollars per day and actual and neces-
sary expenses for each day during which he or she is required
to and does attend a meeting of the board.

(3) Except as limited by this section and applicable insur-
ance rules and statutes, the company may: (1) On its own; (2)
through the formation or acquisition of subsidiaries; or (3)
through a joint enterprise, offer:

(A) Workers’ compensation insurance in a state other than
West Virginia to the extent it also provides workers’ compensa-
tion or occupational disease insurance coverage to the employer
pursuant to this chapter;

(B) Other workers’ compensation products and services and
related products and services in West Virginia or other states;
and

(C) Other property and casualty insurance in West Virginia
and other states on or after the first day of January, two
thousand nine.

(b) Any election process for the board of directors de-
veloped, implemented and overseen by the company’s provisional
board prior to the effective date of the amendments to this
section enacted during the fifth extraordinary session of the
Legislature in two thousand five is nullified and the designation
of the company’s initial board of directors shall be governed by
the following: Effective the first day of January, two thousand
six, the company shall be governed by a board of directors
consisting of seven directors, as follows:

(1) Three owners or officers of an entity that has purchased
or will immediately upon termination of the commission
purchase and maintain an active workers’ compensation
insurance policy from the company. At least one shall be a certified public accountant with financial management or pension or insurance audit expertise and at least one shall be an attorney with financial management experience. These three directors shall be appointed by the Governor.

(2) Two directors who have substantial experience as an officer or employee of a company in the insurance industry, one of whom is from a company with less than fifty employees. These two directors shall be appointed by the Governor.

(3) One director with general knowledge and experience in business management who is an officer and employee of the company and is responsible for the daily management of the company.

(4) The chief executive officer of the company.

(c) The initial board of directors appointed by the Governor shall serve from the termination of the commission through the thirty-first day of December, two thousand eight, and may be not removed from that position except for cause.

(d) Any board vacancy that occurs from the termination of the commission through the thirty-first day of December, two thousand eight, shall be filled through appointment by the Governor for the unexpired term.

(e) Upon expiration of the initial terms or upon a vacancy of the board following the thirty-first day of December, two thousand eight, the directors of the company are to be chosen in accordance with the articles of incorporation and bylaws of the company, as amended, which shall provide for the policyholders to nominate and elect future directors. Furthermore, owners, directors or employees of employers otherwise licensed to write workers' compensation insurance in this state or licensed or otherwise authorized to act as a third-party administrator shall
not be eligible to be nominated, appointed, elected or serve on
the company's board of directors.

(f) The Executive Director shall prepare and file amended
articles of incorporation and bylaws in accordance with the
provisions of this article and the provisions of chapters thirty-
one and thirty-three of this code.

(g) It is the intent of this legislation to create an entity
exempt from federal taxation, as provided for in Section
501(c)(27)(B) of the Internal Revenue Code, for as long as the
company meets the federal qualification requirements of
Section 501(c)(27)(B) of the Internal Revenue Code.


(a) The State Treasurer shall be the custodian of the
workers' compensation Old Fund, workers' compensation
Uninsured Employer Fund, the Self-Insured Employer Guaranty
Risk Pool, the Self-Insured Employer Security Risk Pool, the
Private Carrier Guaranty Fund and the Assigned Risk Fund and
moneys payable to each of these funds shall be deposited in the
State Treasury to the credit of the funds. Each fund shall be a
separate and distinct fund upon the books and records of the
Auditor and Treasurer. Disbursements from these funds shall be
made upon requisitions signed by the executive director and,
effective upon termination of the commission, the Insurance
Commissioner. The workers' compensation Old Fund, the
workers' compensation Uninsured Employer Fund, the Self-
Insured Employer Guaranty Risk Pool, Self-Insured Employer
Security Risk Pool, the Private Carrier Guaranty Fund and the
Assigned Risk Fund are participant plans as defined in section
two, article six, chapter twelve of this code and are subject to
the provisions of section nine-a of said article. The funds may
be invested by the Investment Management Board in accor-
dance with said article.
(b) If the Governor issues the proclamation set forth in this article, then, effective upon termination of the commission, all remaining assets and funds contained in the Workers' Compensation Fund which are payable to the New Fund shall be so disbursed and paid to the company by communication of the executive director to the State Treasurer or other appropriate state official prior to the termination of the commission.


(a) The West Virginia Uninsured Employer Fund shall be governed by the following:

(1) All money and securities in the fund must be held by the State Treasurer as custodian thereof to be used solely as provided in this article.

(2) The State Treasurer may disburse money from the fund only upon written requisition of the Insurance Commissioner.

(3) The Insurance Commissioner shall assess each private carrier and all self-insured employers an amount to be deposited in the fund. The assessment may be collected by each private carrier from its policy holders in the form of a policy surcharge. To establish the amount of the assessment, the Insurance Commissioner shall determine the amount of money necessary to maintain an appropriate balance in the fund for each fiscal year and shall allocate a portion of that amount to be payable by private carriers, a portion to be payable by self-insured employers and a portion to be paid by any other appropriate group. After allocating the amounts payable, the Insurance Commissioner shall apply an assessment rate to:

(A) Private carriers that reflects the relative hazard of the employments covered by the private carriers, results in an equitable distribution of costs among the private carriers and is based upon expected annual premiums to be received;
(B) Self-insured employers that results in an equitable distribution of costs among the self-insured employers and is based upon expected annual expenditures for claims; and

(C) Any other categories of payees that results in an equitable distribution of costs among them and is based upon expected annual expenditures for claims or premium to be received.

(4) The workers' compensation board of managers may adopt rules for the establishment and administration of the assessment methodologies, rates, payments and any penalties that the workers' compensation board of managers determines are necessary to carry out the provisions of this section.

(b) Payments from the fund shall be governed by the following:

(1) Except as otherwise provided in this subsection, an injured worker of any employer required to be covered under this chapter who has failed to obtain coverage may receive compensation from the uninsured employers' fund if:

(A) He or she meets all jurisdictional and entitlement provisions of this chapter;

(B) He or she files a claim with the Insurance Commissioner; and

(C) He or she makes an irrevocable assignment to the Insurance Commissioner a right to be subrogated to the rights of the injured employee.

(2) If the Insurance Commissioner receives a claim, it shall immediately notify the employer of the claim. For the purposes of this section, the employer has the burden of proving that it provided mandatory workers' compensation insurance coverage
for the employee or that it was not required to maintain
workers' compensation insurance for the employee. If the
employer meets this burden, benefits shall not be paid from the
fund.

(3) Any employer who has failed to provide mandatory
coverage required by the provisions of this chapter is liable for
all payments made on its behalf, including any benefits,
administrative costs and attorney's fees paid from the fund or
incurred by the Insurance Commissioner.

(4) The Insurance Commissioner:

(A) May recover from the employer the payments made by
it, any accrued interest and attorney fees and costs by bringing
a civil action in a court of competent jurisdiction.

(B) May enter into a contract with any person, including the
third-party administrator of the Uninsured Employer Fund, to
assist in the collection of any liability of an uninsured em-
ployer.

(C) In lieu of a civil action, may enter into an agreement or
settlement regarding the collection of any liability of an
uninsured employer.

(5) The Insurance Commissioner shall:

(A) Determine whether the employer was insured within
five days after receiving notice of the claim from the employee.

(B) Assign the claim to the third-party administrator of the
fund for administration and, if appropriate, payment of compen-
sation.

(6) Upon determining whether the claim is accepted or
denied, the third-party administrator shall notify the injured
employee and the named employer of its determination.
(7) Any party aggrieved by a determination made by the Insurance Commissioner or the third-party administrator regarding the claims decisions made pursuant to this section may appeal that determination by filing a protest with the office of judges as set forth in article five of this chapter.

(8) An uninsured employer is liable for the interest on any amount paid on his or her claims from the fund. The interest must be calculated at a rate set in accordance with the provisions of section thirteen, article two of this chapter, compounded monthly, from the date the claim is paid from the account until payment is received by the Insurance Commissioner or third-party administrator from the employer.

(9) Attorney’s fees recoverable by the Insurance Commissioner or third-party administrator pursuant to this section must be paid at the usual and customary rate for that attorney.

(10) In addition to any other liabilities provided in this section, the Insurance Commissioner or the third-party administrator may impose an administrative fine of not more than ten thousand dollars against an employer if the employer fails to provide mandatory coverage required by this chapter. All fines and other moneys collected pursuant to this section shall be deposited into the Uninsured Employer Fund.

(c) Employees of self-insured employers who are injured while employed by a self-insured employer are ineligible for benefits from the West Virginia Uninsured Employer Fund.


(a) Effective upon termination of the commission, all subscriber policies with the commission shall novate to the company and all employers otherwise shall purchase workers’ compensation insurance from the company unless permitted to self-insure their obligations. The company shall assume
responsibility for all New Fund obligations of the subscriber policies which novate to the company or which are issued thereafter. Each subscriber whose policy novates to the company shall also have its advanced deposit credited to its account with the company. Employers purchasing workers’ compensation insurance from the company shall have the right to designate a representative or agent to act on its behalf in any and all matters relevant to coverage and claims as administered by the company.

(b) Effective the first day of July, two thousand eight, an employer may elect to: (1) Continue to purchase workers’ compensation insurance from the company; (2) purchase workers’ compensation insurance from another private carrier licensed and otherwise authorized to transact workers’ compensation insurance in this state; or (3) self-insure its obligations if it satisfies all requirements of this code to so self-insure and is permitted to do so: Provided, That all state and local governmental bodies, including, but not limited to, all counties and municipalities and their subdivisions and including all boards, colleges, universities and schools, shall continue to purchase workers’ compensation insurance from the company through the thirtieth day of June, two thousand twelve. The company and other private carriers shall be permitted to sell workers’ compensation insurance through licensed agents in the state. To the extent that a private carrier markets workers’ compensation insurance through a licensed agent, it shall be subject to all applicable provisions of chapter thirty-three of this code. All employers’ must immediately notify the Insurance Commissioner of its private carrier and any change thereto.

(c) An employer may elect to change its private insurer carrier on or after the first day of July, two thousand eight, if the employer has:
(1) Given at least thirty days' notice to the Insurance Commissioner of the change of insurer; and

(2) Furnished evidence satisfactory to the Insurance Commissioner that the payment of compensation has otherwise been secured.

(d) Each private carrier and employer shall notify the Insurance Commissioner if an employer has changed his or her insurer or has allowed his or her insurance to lapse within twenty-four hours or by the end of the next working day, whichever is later, after the insurer has notice of the change or lapse. Every employer shall post a notice upon its premises in a conspicuous place identifying its industrial insurer. The notice must include the insurer's name, business address and telephone number and the name, business address and telephone number of its nearest adjuster in this state. The employer shall at all times maintain the notice provided for the information of his or her employees. Release of employer policy information and status by the industrial council and the Insurance Commissioner shall be governed by section four, article one of this chapter. The Insurance Commissioner shall collect and maintain information related to officers, directors and ten percent or more owners of each carrier's policy holders. The private carrier shall provide said information to the Insurance Commissioner.

(e) Any rule promulgated by the workers' compensation board of managers empowering agencies of this state to revoke or refuse to grant, issue or renew any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employer whose account is in default with the commission shall be fully enforceable by the Insurance Commissioner against the employer in policy default with a private carrier.
(f) Effective the first day of January, two thousand nine, the company may decline to offer coverage to any applicant. Effective the first day of January, two thousand nine, the company and private carriers may cancel a policy or decline to renew a policy upon the issuance of sixty days' written advance notice to the policyholder: Provided, That cancellation of the policy by the carrier for failure of consideration to be paid by the policyholder is effective after fifteen days advance written notice of cancellation to the policyholder.


(a) Notwithstanding any provision of this code to the contrary, the company shall be the initial third-party administrator of the Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool and Private Carrier Guaranty Fund from the termination of the commission and thereafter for a term of at least six months but not more than three years pursuant to an agreement to be entered into between the Insurance Commissioner and the company prior to the termination of the commission. The company shall be paid a reasonable fee for services provided. The company’s administrative duties may include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the State Treasurer’s office or other applicable state agency and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. The administration of said funds thereafter shall be subject to the procedures set forth in article three, chapter five-a of this code.

(b) The Insurance Commissioner shall review claims determined to be payable from said funds and may contest the
determination pursuant to the provisions of article five of this chapter.

(c) The Insurance Commissioner may conduct or cause to be conducted an annual audit to be performed on said funds.

(d) The Insurance Commissioner may contract or employ counsel to perform legal services related solely to the collection of moneys due the Old Fund, including the collection of moneys due the Old Fund and enforcement of repayment agreements entered into for the collection of moneys due on or before the thirtieth day of June, two thousand five, in any administrative proceeding and in any state or federal court.


(a) A self-insured employer shall continue to comply with rules promulgated by the board of managers governing the self-administration of its claims and the successor to the commission shall also comply with the rules promulgated by the board of managers governing the self-administration of claims.

(b) The successor to the commission, any other private carrier and any employer that self-insures its risk and self-administers its claims shall exercise all authority and responsibility granted to the commission in this chapter and provide notices of action taken to effect the purposes of this chapter to provide benefits to persons who have suffered injuries or diseases covered by this chapter. The successor to the commission, private carriers and self-insured employers shall at all times be bound and shall comply fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in article four of this chapter pertaining to disability and death benefits are binding on and shall be strictly adhered to by the successor to the commission, private carriers and the self-insured employer in their administration of claims presented by employees of the self-insured employer.
(c) Upon termination of the commission, the Occupational Pneumoconiosis Board shall be transferred to the Insurance Commissioner and shall be administered by the Insurance Commissioner. The company and other private carriers shall have all authority and responsibility granted to the self-insured employers in the administration and processing of occupational pneumoconiosis claims.

(d) Upon termination of the commission, all claims allocation responsibilities shall transfer from the commission to the Insurance Commissioner.

(e) Upon termination of the commission, the third-party administrator of the Old Fund shall have all administrative and adjudicatory authority vested in the commission in administering old law liabilities and otherwise processing and deciding old law claims.

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.

§23-4B-1. Purpose.

The purpose of this article is to establish a fund to provide benefits to coal miners who are totally disabled by pneumoconiosis and to eligible dependents of coal miners whose deaths were due to pneumoconiosis or who were totally disabled from pneumoconiosis at time of their deaths. The further purpose of this article is to provide a readily available insurer of liability created by Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, for claims incurred under said Act, including all claims where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed.

§23-4B-2. Coal-Workers' Pneumoconiosis Fund established.

For the relief of persons who are entitled to receive benefits by virtue of Title IV of the federal Coal Mine Health and Safety
Act of 1969, as amended, for claims incurred under said Act, including all claims where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed, there is continued a fund to be known as the Coal-Workers' Pneumoconiosis Fund, which fund shall be separate from the Workers' Compensation Fund. The Coal-Workers' Pneumoconiosis Fund shall consist of premiums and other funds paid to the fund by employers, subject to the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, who shall elect to subscribe to the fund to ensure the payment of benefits required by the Act for claims incurred under said Act, including all claims where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed.

The State Treasurer shall be the custodian of the Coal-Workers' Pneumoconiosis Fund and all premiums, deposits or other moneys paid to the fund shall be deposited in the State Treasury to the credit of the Coal-Workers' Pneumoconiosis Fund. Disbursements from the fund shall be made upon requisition signed by the Executive Director of the Workers' Compensation Commission to those persons entitled to participate in the fund: Provided, That effective upon the termination of the Workers' Compensation Commission, disbursement from the Coal-Workers' Pneumoconiosis Fund shall be made upon requisitions signed by the Insurance Commissioner. The Insurance Commissioner shall collect any unpaid premium and deposit the same in said fund. The West Virginia Investment Management Board may invest any surplus, reserve or other moneys belonging to the Coal-Workers' Pneumoconiosis Fund in accordance with article six, chapter twelve of this code.

§23-4B-3. To whom benefits paid.

Only those classes of persons who are entitled to benefits under Title IV of the federal Coal Mine Health and Safety Act
of 1969, as amended, for claims incurred under said Act, including all claims where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed, are eligible to participate in the Coal-Workers’ Pneumoconiosis Fund.

§23-4B-4. Who may subscribe.

Only those employers who are subject to the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, may elect to subscribe to the Coal-Workers’ Pneumoconiosis Fund to insure the liability imposed upon such employers under the provisions of Title IV of the Act. Coverage by the Coal-Workers’ Pneumoconiosis Fund will be provided only for claims incurred under the Act, including all claims where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed.

§23-4B-5. Payment of benefits.

Upon receipt of an order of compensation issued pursuant to a claim for benefits filed under the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, for claims incurred under said Act, including all claims where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed, the executive director shall disburse the Coal-Workers’ Pneumoconiosis Fund in the amounts and to the persons as directed by the order: Provided, That effective upon the termination of the Workers’ Compensation Commission, disbursement from the Coal-workers’ Pneumoconiosis Fund shall be made upon requisitions signed by the Insurance Commissioner.

§23-4B-7. Administration.
(a) The Coal-Workers' Pneumoconiosis Fund shall be administered by the Executive Director of the Workers' Compensation Commission, who shall employ any employees necessary to discharge his or her duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the State Treasurer from the Coal-Workers' Pneumoconiosis Fund upon requisitions signed by the executive director.

(b) Notwithstanding any provision of this code to the contrary, effective from the termination of the Workers' Compensation Commission, the Coal-Workers' Pneumoconiosis Fund shall be administered by the Insurance Commissioner, who shall employ any employees and contract with any parties necessary to discharge his or her duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the State Treasurer from the Coal-Workers' Pneumoconiosis Fund upon requisitions signed by the Insurance Commissioner: Provided, That the employers' mutual insurance company established pursuant to article two-c of this chapter shall be the administrator of the Coal-Workers' Pneumoconiosis Fund for a term not to exceed three years following the termination of the Workers' Compensation Commission pursuant to an agreement to be entered into between the Insurance Commissioner and the Company prior to the termination of the Workers' Compensation Commission. The Company's administrative duties may include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the State Treasurer's office and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. Any contract entered into by the Insurance Commissioner for the administration of the Coal-Workers' Pneumoconiosis Fund
thereafter shall be subject to the procedures set forth in article three, chapter five-a of this code.

§23-4B-9. Closure of Coal-Workers' Pneumoconiosis Fund and coverage provided by the successor of the commission.

1 Upon the termination of the commission, the Coal-Workers' Pneumoconiosis Fund shall close and the company shall offer insurance to provide for the benefits required by this article until at least the thirty-first day of December, two thousand eight. All claims payment obligations, including indemnity benefits, medical benefits, administrative and all other expenses necessary for the administration and defense of claims, where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed, shall be an obligation of the Coal-Workers' Pneumoconiosis Fund created in this article and not of the company.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th day of November, 2005.

Governor