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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2878

(By Delegates H. White, R.M. Thompson, Hrutkay,
Perry, Azinger and G. White)



Passed April 9, 2005

In Effect Ninety Days from Passage

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H. B. 2878

(BY DELEGATES H. WHITE, R.M. THOMPSON, HRUTKAY,
PERRY, AZINGER AND G. WHITE)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend and reenact §23-1-1b of the Code of West Virginia, 1931, as amended; to amend and reenact §33-41-8 of said code; and to amend said code by adding thereto a new section, designated §33-41-8a; all relating to insurance fraud; authorizing the Insurance Commissioner to assign the Workers' Compensation Fraud and Abuse Unit to investigate insurance fraud; permitting the Insurance Commissioner's fraud unit to investigate Workers' Compensation fraud and the forgery of insurance documents; designating the Fraud Unit a criminal justice agency for purposes of access to information; and requiring fingerprinting and background checks of applicants for employment with the fraud unit.

Be it enacted by the Legislature of West Virginia:

That §23-1-1b of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-41-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-41-8a, all to read as follows:

CHAPTER 23. WORKERS COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1b. Executive director; qualifications; oath; seal; removal; powers and duties.

1 (a) The executive director shall be hired by the board of
2 managers for a term not to exceed five years and may be
3 retained based on overall performance for additional terms:
4 *Provided*, That the executive director of the division of work-
5 ers' compensation on the date of the enactment of this section
6 in the year two thousand three shall serve as the initial execu-
7 tive director of the commission and shall receive the same
8 salary and benefits as received as the executive director of the
9 division of workers' compensation through and until the board
10 of managers establishes his or her salary and benefits as the
11 executive director of the commission. The position of executive
12 director shall be full-time employment. Except for the initial
13 executive director, candidates for the position of executive
14 director shall have a minimum of a bachelor of arts or science
15 degree from an accredited four-year college or university in one
16 or more of the following disciplines: Finance; economics;
17 insurance administration; law; public administration; account-
18 ing; or business administration. Candidates for the position of
19 executive director will be considered based on their demon-
20 strated education, knowledge and a minimum of ten years'
21 experience in the areas of workers' compensation, insurance
22 company management, administrative and management
23 experience with an organization comparable in size to the
24 workers' compensation commission or any relevant experience

25 which demonstrates an ability to effectively accomplish the
26 purposes of this chapter.

27 (b) The executive director shall not be a candidate for or
28 hold any other public office or trust, nor shall he or she be a
29 member of a political committee. If he or she becomes a
30 candidate for a public office or becomes a member of a political
31 committee, his or her office as executive director shall be
32 immediately vacated.

33 (c) The executive director, before entering upon the duties
34 of his or her office, shall take and subscribe to the oath pre-
35 scribed by section five, article IV of the state constitution. The
36 oath shall be filed with the secretary of state.

37 (d) The executive director shall have an official seal for the
38 authentication of orders and proceedings, upon which seal shall
39 be engraved the words "West Virginia Workers' Compensation
40 Commission" and any other design prescribed by the board of
41 managers. The courts in this state shall take judicial notice of
42 the seal of the commission and in all cases copies of orders,
43 proceedings or records in the office of the West Virginia
44 workers' compensation commission are equal to the original in
45 evidence.

46 (e) The executive director shall not be a member of the
47 board of managers.

48 (f) The executive director shall serve until the expiration of
49 his or her term, resignation or until removed by a two-thirds
50 vote of the full board of managers. The board of managers and
51 the executive director may, by agreement, terminate the term of
52 employment at any time.

53 (g) The executive director shall have overall management
54 responsibility and administrative control and supervision within

55 the workers' compensation commission and has the power and
56 duty to:

57 (1) Establish, with the approval of the board of managers,
58 the overall administrative policy of the commission for the
59 purposes of this chapter;

60 (2) Employ, direct and supervise all employees required in
61 the connection with the performance of the duties assigned to
62 the commission by this chapter and fix the compensation of the
63 employees in accordance with the provisions of article six,
64 chapter twenty-nine of this code: *Provided*, That the executive
65 director shall identify which members of the staff of the
66 workers' compensation commission shall be exempted from the
67 salary schedules or pay plan adopted by the state personnel
68 board and further identify such staff members by job classifica-
69 tion or designation, together with the salary or salary ranges for
70 each such job classification or designation and shall file this
71 information with the director of the division of personnel no
72 later than the thirty-first day of December, two thousand three,
73 and thereafter as changes are made or at least annually: *Pro-*
74 *vided, however*, That, effective the first day of July, two
75 thousand six, if the commission has not been terminated or
76 otherwise discontinued, all employees of the commission shall
77 be exempt and otherwise not under the jurisdiction of the
78 provisions of the statutes, rules and regulations of the classified
79 service set forth in article six, chapter twenty-nine of this code
80 and article six-a of said chapter and are afforded no protections,
81 rights or access to procedures set forth in said provision. All
82 commission employees shall be employees at will unless his or
83 her employment status is altered by an express, written employ-
84 ment contract executed on behalf of the commission and the
85 employee. The commission and its employees shall be exempt
86 and otherwise not under the jurisdiction of the state personnel
87 board, the department of personnel, or any other successor
88 agency, and their statutes, rules and regulations;

89 (3) Reorganize the work of the commission, its divisions,
90 sections and offices to the extent necessary to achieve the most
91 efficient performance of its functions. All persons employed by
92 the workers' compensation division in positions that were
93 formerly supervised and directed by the commissioner of the
94 bureau of employment programs under chapter twenty-one-a of
95 this code are hereby assigned and transferred in their respective
96 classifications to the workers' compensation commission
97 effective the first day of October, two thousand three. Further,
98 the executive director may select persons that are employed by
99 the bureau of employment programs on the effective date of the
100 enactment of this section in the year two thousand three to be
101 assigned and transferred to the workers' compensation commis-
102 sion in their respective classifications, such assignment and
103 transfer to take effect no later than the thirty-first day of
104 December, two thousand three. Employees in the classified
105 service who have gained permanent status as of the effective
106 date of this article will not be subject to further qualifying
107 examination in their respective classifications by reason of any
108 transfer required by the provisions of this subdivision. Due to
109 the emergency currently existing at the commission and the
110 urgent need to develop fast, efficient claims processing,
111 management and administration, the executive director is
112 hereby granted authority to reorganize internal functions and
113 operations and to delegate, assign, transfer, combine, establish,
114 eliminate and consolidate responsibilities and duties to and
115 among the positions transferred under the authority of this
116 subdivision. The division of personnel shall cooperate fully by
117 assisting in all personnel activities necessary to expedite all
118 changes for the commission. The executive director is hereby
119 granted authority to reorganize internal functions and opera-
120 tions and to delegate, assign, transfer, combine, establish,
121 eliminate and consolidate responsibilities and duties to and
122 among the positions transferred under the authority of this
123 subdivision. The division of personnel shall cooperate fully by

124 assisting in all personnel activities necessary to expedite all
125 changes for the commission and shall otherwise continue to
126 provide all necessary administrative support to the commission
127 in connection with the commission's personnel needs until the
128 company established in article two-c of this chapter becomes
129 operational. Nothing contained in this subdivision shall be
130 construed to either abridge the rights of employees within the
131 classified service of the state to the procedures and protections
132 set forth in article six, chapter twenty-nine of this code or to
133 preclude the reclassification or reallocation of positions in
134 accordance with procedures set forth in said article;

135 (4) Exempt no more than twenty-five of any of the newly
136 created positions from the classified service of the state, the
137 employees of which positions shall serve at the will and
138 pleasure of the executive director. The executive director shall
139 report all exemptions made under this subdivision to the
140 director of the division of personnel no later than the first day
141 of January, two thousand four, and thereafter as the executive
142 director determines to be necessary;

143 (5) With the advice and approval of the board of managers,
144 propose operating guidelines and policies to standardize
145 administration, expedite commission business and promote the
146 efficiency of the services provided by the commission;

147 (6) Prepare and submit to the board of managers informa-
148 tion the board requires for classifications of occupations or
149 industries; the basis for premium rates, taxes, surcharges and
150 assessment for administrative charges, for assessments related
151 to loss experience, for assessments of prospective risk exposure,
152 for assessments of deficit management and deficit reduction
153 costs incurred, for other deficit management and deficit
154 reduction assessments, for rules and systems of rating, rate
155 revisions and merit rating for employers covered by this
156 chapter; and information regarding the extent, degree and

157 amount of subsidization between the classifications. The
158 executive director shall obtain, prepare and submit any other
159 information the board of managers requires for the prompt and
160 efficient discharge of its duties;

161 (7) Keep accurate and complete accounts and records
162 necessary to the collection, administration and distribution of
163 the workers' compensation funds;

164 (8) Sign and execute in the name of the state, by "The
165 Workers' Compensation Commission", any contract or agree-
166 ment;

167 (9) Make recommendations and an annual report to the
168 governor concerning the condition, operation and functioning
169 of the commission;

170 (10) Invoke any legal or special remedy for the enforcement
171 of orders or the provisions of this chapter;

172 (11) Prepare and submit for approval to the board of
173 managers a budget for each fiscal year, including estimates of
174 the costs and necessary expenditures of the commission in the
175 discharge of all duties imposed by this chapter as well as the
176 costs of furnishing office space to the officers and employees
177 of the commission;

178 (12) Ensure that all employees of the commission follow
179 the orders, operating guidelines and policies of the commission
180 as they relate to the commission's overall policymaking,
181 management and adjudicatory duties under this chapter;

182 (13) Delegate all powers and duties vested in the executive
183 director to his or her appointees and employees; but the
184 executive director is responsible for their acts;

185 (14) Provide at commission expense a program of continu-
186 ing professional, technical and specialized instruction for the
187 personnel of the commission. The executive director shall
188 consult with and report at least annually to the legislative
189 oversight commission on workforce investment for economic
190 development to obtain the most appropriate training using all
191 available resources;

192 (15) (A) Contract or employ counsel to perform all legal
193 services for the commission including, but not limited to,
194 representing the executive director, board of managers and
195 commission in any administrative proceeding and in any state
196 or federal court. Additionally, the commission may, but shall
197 not be required to, call upon the attorney general for legal
198 assistance and representation as provided by law. The attorney
199 general shall not approve or exercise authority over in-house
200 counsel or contract counsel hired pursuant to this section;

201 (B) In addition to the authority granted by this section to the
202 executive director and notwithstanding any provision to the
203 contrary elsewhere in this code, use any attorney regularly
204 employed by the commission or the office of the attorney
205 general to represent the commission, the executive director or
206 the board of managers in any matter arising from the perfor-
207 mance of its duties or the execution of its powers under this
208 chapter. In addition, the executive director, with the approval of
209 the board of managers, may retain counsel for any purpose in
210 the administration of this chapter relating to the collection of
211 any amounts due from employers to the commission: *Provided,*
212 That the allocation of resources for the purpose of any collec-
213 tions shall be pursuant to the plan developed by the board of
214 managers. The board of managers shall solicit proposals from
215 counsel who are interested in representing the commission
216 under the terms of this subdivision. Thereafter, the board of
217 managers shall select any attorneys it determines necessary to
218 pursue the collection objectives of this subdivision:

219 (i) Payment to retained counsel may either be hourly or by
220 other fixed fee, or as determined by the court or administrative
221 law judge as provided in this section. A contingency fee
222 payable from the amount recovered by judgment or settlement
223 for the commission is only permitted, to the extent not prohib-
224 ited by federal law, when the assets of a defendant or respon-
225 dent are depleted so that a full recovery plus attorneys' fees is
226 not possible;

227 (ii) In the event that any collections action, other than a
228 collections action against a claimant, initiated either by retained
229 counsel or other counsel on behalf of the commission results in
230 a judgment or settlement in favor of the commission, the court
231 or, if there was no judicial component to the action, the
232 administrative law judge, shall determine the amount of
233 attorneys' fees that shall be paid by the defendants or respon-
234 dents to the retained or other counsel representing the commis-
235 sion. If the court is to determine the amount of attorneys' fees,
236 it shall include in its determination the amount of fee that
237 should be paid for the representation of the commission in
238 pursuing the administrative component, if any, of the action.
239 The amount so paid shall be fixed by the court or the adminis-
240 trative law judge in an amount no less than twenty percent of its
241 recovery. Any additional amount of attorneys' fees shall be
242 determined by use of the following factors:

243 (I) The counsel's normal hourly rate or, if the counsel is an
244 employee of the commission or is an employee of the office of
245 the attorney general, an hourly rate the court or the administra-
246 tive law judge determines to be customary based upon the
247 attorney's experience and skill level;

248 (II) The number of hours actually expended on the action;

249 (III) The complexity of the issues involved in the action;

250 (IV) The degree of risk involved in the case with regard to
251 the probability of success or failure;

252 (V) The overhead costs incurred by counsel with regard to
253 the use of paralegals and other office staff, experts and investi-
254 gators; and

255 (VI) The public purpose served or public objective achieved
256 by the attorney in obtaining the judgment or settlement on
257 behalf of the commission;

258 (iii) Notwithstanding the provisions of paragraph (B) of this
259 subdivision, if the commission and the defendants or respon-
260 dents to any administrative or judicial action settle the action,
261 the parties may negotiate a separate settlement of attorneys'
262 fees to be paid by the defendants or respondents above and
263 beyond the amount recovered by the commission. In the event
264 that a settlement of attorneys' fees is made, it must be submit-
265 ted to the court or administrative law judge for approval;

266 (iv) Any attorney regularly employed by the commission or
267 by the office of the attorney general may not receive any
268 remuneration for his or her services other than the attorney's
269 regular salary. Any attorneys' fees awarded for an employed
270 attorney are payable to the commission;

271 (16) Propose rules for promulgation by the board of
272 managers under which agencies of this state shall revoke or
273 refuse to grant, issue or renew any contract, license, permit,
274 certificate or other authority to conduct a trade, profession or
275 business to or with any employing unit whose account is in
276 default with the commission with regard to the administration
277 of this chapter. The term "agency" includes any unit of state
278 government such as officers, agencies, divisions, departments,
279 boards, commissions, authorities or public corporations. An
280 employing unit is not in default if it has entered into a repay-

281 ment agreement with the commission and remains in compli-
282 ance with its obligations under the repayment agreements;

283 (A) The rules shall provide that, before granting, issuing or
284 renewing any contract, license, permit, certificate or other
285 authority to conduct a trade, profession or business to or with
286 any employing unit, the designated agencies shall review a list
287 or lists provided by the commission of employers that are in
288 default. If the employing unit's name is not on the list, the
289 agency, unless it has actual knowledge that the employing unit
290 is in default with the commission, may grant, issue or renew the
291 contract, license, permit, certificate or other authority to
292 conduct a trade, profession or business. The list may be
293 provided to the agency in the form of a computerized database
294 or databases that the agency can access. Any objections to the
295 refusal to issue or renew shall be reviewed under the appropri-
296 ate provisions of this chapter. The prohibition against granting,
297 issuing or renewing any contract, license, permit, certificate or
298 other authority under this subdivision shall remain in full force
299 and effect as promulgated under section six, article two, chapter
300 twenty-one-a of this code until the rules required by this
301 subsection are promulgated and in effect;

302 (B) The rules shall also provide a procedure allowing any
303 agency or interested person, after being covered under the rules
304 for at least one year, to petition the commission to be exempt
305 from the provisions of the rules;

306 (17) Deposit to the credit of the appropriate special revenue
307 account or fund, notwithstanding any other provision of this
308 code and to the extent allowed by federal law, all amounts of
309 delinquent payments or overpayments, interest and penalties
310 thereon and attorneys' fees and costs collected under the
311 provisions of this chapter. The amounts collected shall not be
312 treated by the auditor or treasurer as part of the general revenue
313 of the state;

314 (18) Recommend for approval of the board of managers
315 rules for the administration of claims management by self-
316 insured employers and third-party administrators including
317 regulation and sanctions for the rejection of claims and for
318 maintaining claim records and ensuring access to all claim
319 records by interested claimants, claimant representatives, the
320 commission and the office of judges;

321 (19) Recommend for approval of the board of managers,
322 rules to eliminate the ability of an employer to avoid an
323 experience modification factor by virtue of a reorganization of
324 a business;

325 (20) Submit for approval of the board of managers rules
326 setting forth procedures for auditing and investigating employ-
327 ers, including employer premium audits and including auditing
328 and investigating programs of self-insured employers and third-
329 party administrators, employees, health care providers and
330 medical and vocational rehabilitation service providers;

331 (21) Regularly audit and monitor programs established by
332 self-insured or third-party administrators under this chapter to
333 ensure compliance with the commission's rules and the law;

334 (22) Facilitate the transfer of the fraud investigation and
335 prosecution unit, along with the assets necessary to support the
336 functions being performed, to the insurance commissioner. This
337 transfer shall be completed by the first day of July, two thou-
338 sand five. This unit has the responsibility and authority for
339 investigating and controlling fraud of the workers' compensa-
340 tion system of the state of West Virginia and shall perform such
341 other duties as may be assigned to it by the Insurance Commis-
342 sioner. The fraud unit shall be under the supervision of an
343 inspector general, who shall be appointed by the insurance
344 commissioner. Nothing in this section shall preclude the
345 commission or, when applicable, the company created in article

346 two-c of this chapter and other private carriers, from independ-
347 ently investigating and controlling abuse and exercising the
348 powers granted to the commission to address and eliminate
349 abuse under this chapter. The executive director may select
350 persons that are assigned to the fraud and abuse unit on the
351 effective date of the enactment of this section to be assigned
352 and remain employees of the workers' compensation commis-
353 sion. The commission shall determine its fiscal year two
354 thousand six budget for the fraud investigation and prosecution
355 unit and shall make advanced quarterly payments to the
356 insurance commissioner during fiscal year two thousand six for
357 the actual operational expenses incurred as a direct result of this
358 transfer. *Provided*, That the payments and expenses shall be
359 reconciled prior to the final fiscal year transfer and any unex-
360 pended amount shall be deducted from the final quarter's
361 payment. This reimbursement methodology shall repeat for
362 fiscal year two thousand seven. Any amounts transferred under
363 this section to the insurance commissioner shall be appropriated
364 by the Legislature. The commission's inspector general shall
365 serve as the initial inspector general for the insurance commis-
366 sioner;

367 (A) The inspector general shall, with the consent and advice
368 of the executive director, employ all personnel as necessary for
369 the institution, development and finalization of procedures and
370 investigations which serve to ensure that only necessary and
371 proper workers' compensation benefits and expenses are paid
372 to or on behalf of injured employees and to insure employers
373 subscribe to and pay the proper premium to the West Virginia
374 workers' compensation commission. Qualification, compensa-
375 tion and personnel practice relating to the employees of the
376 fraud and abuse unit, including that of the position of inspector
377 general, shall be governed by the provisions of the statutes and
378 rules of the classified service pursuant to article six, chapter
379 twenty-nine of this code. The inspector general shall supervise

380 all personnel, which collectively shall be referred to in this
381 chapter as the fraud and abuse unit;

382 (B) The fraud and abuse unit shall have the following
383 powers and duties:

384 (i) The fraud and abuse unit shall propose for promulgation
385 by the board of managers rules for determining the existence of
386 fraud and abuse as it relates to the workers' compensation
387 system in West Virginia;

388 (ii) The fraud and abuse unit will be responsible for the
389 initiation, development, review and proposal for promulgation
390 by the board of managers of rules regarding the existence of
391 fraud and abuse as it relates to the workers' compensation
392 system in West Virginia;

393 (iii) The fraud and abuse unit will take action to identify
394 and prevent and discourage any and all fraud and abuse;

395 (iv) The fraud and abuse unit, in cases of criminal fraud,
396 has the authority to review and prosecute those cases for
397 violations of sections twenty-four-e, twenty-four-f, twenty-four-
398 g and twenty-four-h, article three, chapter sixty-one of this
399 code, as well as any other criminal statutes that may be applica-
400 ble. In addition the fraud and abuse unit not only has the
401 authority to prosecute and refer cases involving criminal fraud
402 to appropriate state authorities for prosecution, but it also has
403 the authority, and is encouraged, to cooperate with the appropri-
404 ate federal authorities for review and possible prosecution, by
405 either state or federal agencies, of cases involving criminal
406 fraud concerning the workers' compensation system in West
407 Virginia;

408 (v) The fraud and abuse unit, in cases which do not meet
409 the definition of criminal fraud, but would meet a reasonable
410 person's definition of an abuse of the workers' compensation

411 system, shall take the appropriate action to discourage and
412 prevent such abuse. Furthermore, the fraud and abuse unit shall
413 assist the commission to develop evidence of fraud or abuse
414 which can be used pursuant to the provisions of this chapter to
415 suspend, and where appropriate, terminate, a claimant's
416 benefits. In addition, evidence developed pursuant to these
417 provisions can be used in hearings before the office of judges
418 on protests to commission decisions terminating, or not
419 terminating, temporary total disability benefits; and

420 (vi) The fraud and abuse unit is expressly authorized to
421 initiate investigations and participate in the development of, and
422 if necessary, the prosecution of any health care provider,
423 including a provider of rehabilitation services, alleged to have
424 violated the provisions of section three-c, article four of this
425 chapter;

426 (C) Specific personnel, designated by the inspector general,
427 shall be permitted to operate vehicles owned or leased for the
428 state displaying Class A registration plates;

429 (D) Notwithstanding any provision of this code to the
430 contrary, specific personnel designated by the inspector general
431 may carry handguns in the course of their official duties after
432 meeting specialized qualifications established by the governor's
433 committee on crime, delinquency and correction, which
434 qualifications shall include the successful completion of
435 handgun training provided to law-enforcement officers by the
436 West Virginia state police: *Provided*, That nothing in this
437 subsection shall be construed to include the personnel so
438 designated by the inspector general to carry handguns within
439 the meaning of the term law-enforcement official as defined in
440 section one, article twenty-nine, chapter thirty of this code;

441 (E) The fraud and abuse unit is not subject to any require-
442 ment of article nine-a, chapter six of this code and the investi-
443 gations conducted by the fraud and abuse unit and the materials

444 placed in the files of the unit as a result of any such investiga-
445 tion are exempt from public disclosure under the provisions of
446 chapter twenty-nine-b of this code;

447 (F) In the event that a final judicial decision adjudges that
448 the statewide prosecutorial powers vested by this subdivision in
449 the fraud and abuse unit may only be exercised by a public
450 official other than an employee of the fraud and abuse unit, then
451 to that extent the provisions of this subdivision vesting state-
452 wide prosecutorial power shall thenceforth be of no force and
453 effect, the remaining provisions of this subdivision shall
454 continue in full force and effect and prosecutions hereunder
455 may only be exercised by the prosecuting attorneys of this state
456 and their assistants or special assistant prosecuting attorneys
457 appointed as provided by law;

458 (23) Enter into interagency agreements to assist in exchang-
459 ing information and fulfilling the default provisions of this
460 chapter;

461 (24) Notwithstanding any provision of this code to the
462 contrary, the executive director, under emergency authorization:

463 (A) May expend up to fifty thousand dollars for purchases
464 of and may contract for goods and services without securing
465 competitive bids. This emergency spending authority expires on
466 the first day of July, two thousand five; and

467 (B) May expend such sums as the executive director
468 determines are necessary for professional services, contracts for
469 the purchase of an automated claims administration system and
470 associated computer hardware and software in the administra-
471 tion of claims for benefits made under provisions of this chapter
472 and contracts for technical services and related services
473 necessary to develop, implement and maintain the system and
474 associated computer hardware and software. The provisions of
475 article three, chapter five-a of this code relating to the purchas-

476 ing division of the department of administration shall not apply
477 to these contracts. The director shall award the contract or
478 contracts on a competitive basis. This emergency spending
479 authority expires on the thirty-first day of December, two
480 thousand six;

481 (25) Establish an employer violator system to identify
482 individuals and employers who are in default or are delinquent
483 on any premium, assessment, surcharge, tax or penalty owed to
484 the commission. The employer violator system shall prohibit
485 violators who own, control or have a ten percent or more
486 ownership interest, or other ownership interest as may be
487 defined by the commission, in any company from obtaining or
488 maintaining any license, certificate or permit issued by the state
489 until the violator has paid all moneys owed to the commission
490 or has entered into and remains in compliance with a repayment
491 agreement;

492 (26) Propose the designation of health care providers to
493 make decisions for the commission regarding appropriateness
494 of medical services;

495 (27) Study the correlation between premium tax merit
496 rating for employers and the safety performance of employers.
497 This study shall be completed prior to the first day of July, two
498 thousand four, and the results thereof provided to the board of
499 managers;

500 (28) Upon termination of the commission, accomplish the
501 transfer to the insurance commissioner established in article
502 two-c of this chapter, the insurance commissioner, and any
503 other applicable state agency or department, of the functions
504 necessary for the regulation of the workers' compensation
505 insurance industry, including, but not limited to, the following
506 commission functions: rate making, self-insurance, office of
507 judges and board of review. The executive director may select
508 persons that are assigned to these functions on the effective date

509 of the enactment of this section to be assigned and become
510 employees of the company as established in article two-c of this
511 chapter. The executive director may, in consultation with the
512 insurance commissioner, select persons that are assigned to the
513 insurance commissioner. The commission shall determine its
514 fiscal year two thousand six budget for each of these functions,
515 reduce the budget amount attributable to self-insured employers
516 for these functions and shall make advanced quarterly payments
517 to the insurance commissioner during fiscal year two thousand
518 six for the actual operational expenses incurred as a direct result
519 of this transfer. The amount shall include the funds necessary
520 to operate the industrial council and the insurance commis-
521 sioner shall be administratively responsible for the industrial
522 council's budget: *Provided*, That the payments and expenses
523 shall be reconciled prior to the final fiscal year transfer and any
524 unexpended amount shall be deducted from the final quarter's
525 payment. This reimbursement methodology shall repeat for
526 fiscal year two thousand seven. Any amounts transferred under
527 this section to the insurance commissioner shall be appropriated
528 by the Legislature. For the final calendar quarter of two
529 thousand five and the first and second calendar quarters of the
530 year two thousand six, all self- insured employers shall remit to
531 the insurance commissioner on a quarterly basis the administra-
532 tive component of their fiscal year two thousand six rate. For
533 the fiscal year beginning the first day of July, two thousand six,
534 self-insured employers shall remit an administrative charge to
535 the insurance commissioner in an amount determined by the
536 commissioner. All self-insured employer advance deposits shall
537 transfer from the commission to the insurance commissioner
538 upon termination of the commission; and

539 (29) Perform all duties set forth in article two-c of this
540 chapter.

CHAPTER 33. INSURANCE.

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§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 is a full-time position and shall be
9 appointed by the Commissioner and serve at his or her will and
10 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 any of the following
17 provisions of this code relating to the business of insurance
18 have been or are being committed: Chapter twenty-three;
19 chapter thirty-three; article three of chapter sixty-one; and
20 section five, article four of chapter sixty-one.

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

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

30 (c) The insurance fraud unit may:

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

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

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

39 (4) Share records and evidence with federal, state or local
40 law-enforcement or regulatory agencies, and enter into inter-
41 agency agreements. For purposes of carrying out investigations
42 under this article, the unit shall be deemed a criminal justice
43 agency under all federal and state laws and regulations and as
44 such shall have access to any information that is available to
45 other criminal justice agencies concerning violations of the
46 insurance laws of West Virginia or related criminal laws;

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

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

58 (7) The insurance fraud unit may initiate investigations and
59 participate in the development of, and if necessary, the prosecu-

60 tion of any health care provider, including a provider of
61 rehabilitation services, suspected of fraudulent activity related
62 to the business of insurance;

63 (8) Specific personnel, designated by the Commissioner,
64 shall be permitted to operate vehicles owned or leased for the
65 state displaying Class A registration plates;

66 (9) Notwithstanding any provision of this code to the
67 contrary, specific personnel designated by the Commissioner
68 may carry firearms in the course of their official duties after
69 meeting specialized qualifications established by the Gover-
70 nor's committee on crime, delinquency and correction, which
71 shall include the successful completion of handgun training
72 provided to law-enforcement officers by the West Virginia
73 State Police: *Provided*, That nothing in this subsection shall be
74 construed to include any person designated by the Commis-
75 sioner as a law-enforcement officer as that term is defined by
76 the provisions of section one, article twenty-nine, chapter thirty
77 of this code; and

78 (10) The insurance fraud unit shall not be subject to the
79 provisions of article nine-a, chapter six of this code and the
80 investigations conducted by the insurance fraud unit and the
81 materials placed in the files of the unit as a result of any such
82 investigation are exempt from public disclosure under the
83 provisions of chapter twenty-nine-b of this code.

84 (d) The insurance fraud unit shall perform other duties as
85 may be assigned to it by the Commissioner.

**§33-41-8a. Fingerprinting and background check for applicants
for employment with fraud unit.**

1 (a) The Commissioner shall require any applicant for
2 employment with the fraud unit to be fingerprinted. The
3 Commissioner is authorized to conduct a criminal records check

4 through the Criminal Identification Bureau of the West Virginia
5 State Police and a national criminal history check through the
6 Federal Bureau of Investigation. The results of any criminal
7 records or criminal history check shall be sent to the Commis-
8 sioner. The West Virginia State Police may exchange this
9 fingerprint data with the Federal Bureau of Investigation.

10 (b) The Director shall not disclose information obtained
11 pursuant to subsection (a) of this section except for purposes
12 directly related to the employment of the applicant.

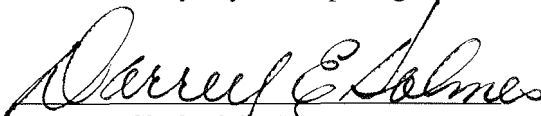
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

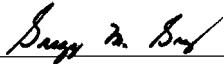

Chairman Senate Committee

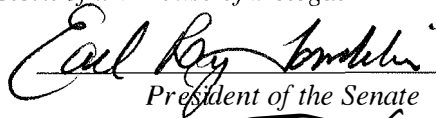

Chairman House Committee

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 was approved this the 3rd day of May 2005.


Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 4:05 pm