WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2878

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

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Passed April 9, 2005

In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

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.

(a) The executive director shall be hired by the board of managers for a term not to exceed five years and may be retained based on overall performance for additional terms: Provided, That the executive director of the division of workers’ compensation on the date of the enactment of this section in the year two thousand three shall serve as the initial executive director of the commission and shall receive the same salary and benefits as received as the executive director of the division of workers’ compensation through and until the board of managers establishes his or her salary and benefits as the executive director of the commission. The position of executive director shall be full-time employment. Except for the initial executive director, candidates for the position of executive director shall have a minimum of a bachelor of arts or science degree from an accredited four-year college or university in one or more of the following disciplines: Finance; economics; insurance administration; law; public administration; accounting; or business administration. Candidates for the position of executive director will be considered based on their demonstrated education, knowledge and a minimum of ten years’ experience in the areas of workers’ compensation, insurance company management, administrative and management experience with an organization comparable in size to the workers’ compensation commission or any relevant experience
which demonstrates an ability to effectively accomplish the purposes of this chapter.

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

c) The executive director, before entering upon the duties of his or her office, shall take and subscribe to the oath prescribed by section five, article IV of the state constitution. The oath shall be filed with the secretary of state.

d) The executive director shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words “West Virginia Workers’ Compensation Commission” and any other design prescribed by the board of managers. The courts in this state shall take judicial notice of the seal of the commission and in all cases copies of orders, proceedings or records in the office of the West Virginia workers’ compensation commission are equal to the original in evidence.

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

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

g) The executive director shall have overall management responsibility and administrative control and supervision within
the workers’ compensation commission and has the power and
duty to:

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

(2) Employ, direct and supervise all employees required in
the connection with the performance of the duties assigned to
the commission by this chapter and fix the compensation of the
employees in accordance with the provisions of article six,
chapter twenty-nine of this code: Provided, That the executive
director shall identify which members of the staff of the
workers’ compensation commission shall be exempted from the
salary schedules or pay plan adopted by the state personnel
board and further identify such staff members by job classification
or designation, together with the salary or salary ranges for
each such job classification or designation and shall file this
information with the director of the division of personnel no
later than the thirty-first day of December, two thousand three,
and thereafter as changes are made or at least annually: Pro-
vided, however, That, effective the first day of July, two
thousand six, if the commission has not been terminated or
otherwise discontinued, all employees of the commission shall
be exempt and otherwise not under the jurisdiction of the
provisions of the statutes, rules and regulations of the classified
service set forth in article six, chapter twenty-nine of this code
and article six-a of said chapter and are afforded no protections,
rights or access to procedures set forth in said provision. All
commission employees shall be employees at will unless his or
her employment status is altered by an express, written employ-
ment contract executed on behalf of the commission and the
employee. The commission and its employees shall be exempt
and otherwise not under the jurisdiction of the state personnel
board, the department of personnel, or any other successor
agency, and their statutes, rules and regulations;
(3) Reorganize the work of the commission, its divisions, sections and offices to the extent necessary to achieve the most efficient performance of its functions. All persons employed by the workers’ compensation division in positions that were formerly supervised and directed by the commissioner of the bureau of employment programs under chapter twenty-one-a of this code are hereby assigned and transferred in their respective classifications to the workers’ compensation commission effective the first day of October, two thousand three. Further, the executive director may select persons that are employed by the bureau of employment programs on the effective date of the enactment of this section in the year two thousand three to be assigned and transferred to the workers’ compensation commission in their respective classifications, such assignment and transfer to take effect no later than the thirty-first day of December, two thousand three. Employees in the classified service who have gained permanent status as of the effective date of this article will not be subject to further qualifying examination in their respective classifications by reason of any transfer required by the provisions of this subdivision. Due to the emergency currently existing at the commission and the urgent need to develop fast, efficient claims processing, management and administration, the executive director is hereby granted authority to reorganize internal functions and operations and to delegate, assign, transfer, combine, establish, eliminate and consolidate responsibilities and duties to and among the positions transferred under the authority of this subdivision. The division of personnel shall cooperate fully by assisting in all personnel activities necessary to expedite all changes for the commission. The executive director is hereby granted authority to reorganize internal functions and operations and to delegate, assign, transfer, combine, establish, eliminate and consolidate responsibilities and duties to and among the positions transferred under the authority of this subdivision. The division of personnel shall cooperate fully by
assisting in all personnel activities necessary to expedite all changes for the commission and shall otherwise continue to provide all necessary administrative support to the commission in connection with the commission’s personnel needs until the company established in article two-c of this chapter becomes operational. Nothing contained in this subdivision shall be construed to either abridge the rights of employees within the classified service of the state to the procedures and protections set forth in article six, chapter twenty-nine of this code or to preclude the reclassification or reallocation of positions in accordance with procedures set forth in said article;

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

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

(6) Prepare and submit to the board of managers information the board requires for classifications of occupations or industries; the basis for premium rates, taxes, surcharges and assessment for administrative charges, for assessments related to loss experience, for assessments of prospective risk exposure, for assessments of deficit management and deficit reduction costs incurred, for other deficit management and deficit reduction assessments, for rules and systems of rating, rate revisions and merit rating for employers covered by this chapter; and information regarding the extent, degree and
amount of subsidization between the classifications. The executive director shall obtain, prepare and submit any other information the board of managers requires for the prompt and efficient discharge of its duties;

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

8) Sign and execute in the name of the state, by “The Workers’ Compensation Commission”, any contract or agreement;

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

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

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

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

(13) Delegate all powers and duties vested in the executive director to his or her appointees and employees; but the executive director is responsible for their acts;
(14) Provide at commission expense a program of continuing professional, technical and specialized instruction for the personnel of the commission. The executive director shall consult with and report at least annually to the legislative oversight commission on workforce investment for economic development to obtain the most appropriate training using all available resources;

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

(B) In addition to the authority granted by this section to the executive director and notwithstanding any provision to the contrary elsewhere in this code, use any attorney regularly employed by the commission or the office of the attorney general to represent the commission, the executive director or the board of managers in any matter arising from the performance of its duties or the execution of its powers under this chapter. In addition, the executive director, with the approval of the board of managers, may retain counsel for any purpose in the administration of this chapter relating to the collection of any amounts due from employers to the commission: Provided, That the allocation of resources for the purpose of any collections shall be pursuant to the plan developed by the board of managers. The board of managers shall solicit proposals from counsel who are interested in representing the commission under the terms of this subdivision. Thereafter, the board of managers shall select any attorneys it determines necessary to pursue the collection objectives of this subdivision:
(i) Payment to retained counsel may either be hourly or by other fixed fee, or as determined by the court or administrative law judge as provided in this section. A contingency fee payable from the amount recovered by judgment or settlement for the commission is only permitted, to the extent not prohibited by federal law, when the assets of a defendant or respondent are depleted so that a full recovery plus attorneys’ fees is not possible;

(ii) In the event that any collections action, other than a collections action against a claimant, initiated either by retained counsel or other counsel on behalf of the commission results in a judgment or settlement in favor of the commission, the court or, if there was no judicial component to the action, the administrative law judge, shall determine the amount of attorneys’ fees that shall be paid by the defendants or respondents to the retained or other counsel representing the commission. If the court is to determine the amount of attorneys’ fees, it shall include in its determination the amount of fee that should be paid for the representation of the commission in pursuing the administrative component, if any, of the action. The amount so paid shall be fixed by the court or the administrative law judge in an amount no less than twenty percent of its recovery. Any additional amount of attorneys’ fees shall be determined by use of the following factors:

(I) The counsel’s normal hourly rate or, if the counsel is an employee of the commission or is an employee of the office of the attorney general, an hourly rate the court or the administrative law judge determines to be customary based upon the attorney’s experience and skill level;

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

(III) The complexity of the issues involved in the action;
(IV) The degree of risk involved in the case with regard to
the probability of success or failure;

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

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

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

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

(16) Propose rules for promulgation by the board of
managers under which agencies of this state shall 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 employing unit whose account is in
default with the commission with regard to the administration
of this chapter. The term “agency” includes any unit of state
government such as officers, agencies, divisions, departments,
boards, commissions, authorities or public corporations. An
employing unit is not in default if it has entered into a repay-
ment agreement with the commission and remains in compliance with its obligations under the repayment agreements;

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

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

(17) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest and penalties thereon and attorneys’ fees and costs collected under the provisions of this chapter. The amounts collected shall not be treated by the auditor or treasurer as part of the general revenue of the state;
(18) Recommend for approval of the board of managers rules for the administration of claims management by self-insured employers and third-party administrators including regulation and sanctions for the rejection of claims and for maintaining claim records and ensuring access to all claim records by interested claimants, claimant representatives, the commission and the office of judges;

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

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

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

(22) Facilitate the transfer of the fraud investigation and prosecution unit, along with the assets necessary to support the functions being performed, to the insurance commissioner. This transfer shall be completed by the first day of July, two thousand five. This unit has the responsibility and authority for investigating and controlling fraud of the workers’ compensation system of the state of West Virginia and shall perform such other duties as may be assigned to it by the Insurance Commissioner. The fraud unit shall be under the supervision of an inspector general, who shall be appointed by the insurance commissioner. Nothing in this section shall preclude the commission or, when applicable, the company created in article
two-c of this chapter and other private carriers, from independently investigating and controlling abuse and exercising the powers granted to the commission to address and eliminate abuse under this chapter. The executive director may select persons that are assigned to the fraud and abuse unit on the effective date of the enactment of this section to be assigned and remain employees of the workers’ compensation commission. The commission shall determine its fiscal year two thousand six budget for the fraud investigation and prosecution unit and shall make advanced quarterly payments to the insurance commissioner during fiscal year two thousand six for the actual operational expenses incurred as a direct result of this transfer. *Provided,* That the payments and expenses shall be reconciled prior to the final fiscal year transfer and any unexpended amount shall be deducted from the final quarter’s payment. This reimbursement methodology shall repeat for fiscal year two thousand seven. Any amounts transferred under this section to the insurance commissioner shall be appropriated by the Legislature. The commission’s inspector general shall serve as the initial inspector general for the insurance commissioner;

(A) The inspector general shall, with the consent and advice of the executive director, employ all personnel as necessary for the institution, development and finalization of procedures and investigations which serve to ensure that only necessary and proper workers’ compensation benefits and expenses are paid to or on behalf of injured employees and to insure employers subscribe to and pay the proper premium to the West Virginia workers’ compensation commission. Qualification, compensation and personnel practice relating to the employees of the fraud and abuse unit, including that of the position of inspector general, shall be governed by the provisions of the statutes and rules of the classified service pursuant to article six, chapter twenty-nine of this code. The inspector general shall supervise
all personnel, which collectively shall be referred to in this chapter as the fraud and abuse unit;

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

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

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

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

(iv) The fraud and abuse unit, in cases of criminal fraud, has the authority to review and prosecute those cases for violations of sections twenty-four-e, twenty-four-f, twenty-four-g and twenty-four-h, article three, chapter sixty-one of this code, as well as any other criminal statutes that may be applicable. In addition the fraud and abuse unit not only has the authority to prosecute and refer cases involving criminal fraud to appropriate state authorities for prosecution, but it also has the authority, and is encouraged, to cooperate with the appropriate federal authorities for review and possible prosecution, by either state or federal agencies, of cases involving criminal fraud concerning the workers’ compensation system in West Virginia;

(v) The fraud and abuse unit, in cases which do not meet the definition of criminal fraud, but would meet a reasonable person’s definition of an abuse of the workers’ compensation
system, shall take the appropriate action to discourage and prevent such abuse. Furthermore, the fraud and abuse unit shall assist the commission to develop evidence of fraud or abuse which can be used pursuant to the provisions of this chapter to suspend, and where appropriate, terminate, a claimant's benefits. In addition, evidence developed pursuant to these provisions can be used in hearings before the office of judges on protests to commission decisions terminating, or not terminating, temporary total disability benefits; and

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

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

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

(E) The fraud and abuse unit is not subject to any require-
ment of article nine-a, chapter six of this code and the investiga-
gations conducted by the fraud and abuse unit and the materials
placed in the files of the unit as a result of any such investiga-
tion are exempt from public disclosure under the provisions of
chapter twenty-nine-b of this code;

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

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

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

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

(B) May expend such sums as the executive director
determines are necessary for professional services, contracts for
the purchase of an automated claims administration system and
associated computer hardware and software in the administra-
tion of claims for benefits made under provisions of this chapter
and contracts for technical services and related services
necessary to develop, implement and maintain the system and
associated computer hardware and software. The provisions of
article three, chapter five-a of this code relating to the purchas-
ing division of the department of administration shall not apply
to these contracts. The director shall award the contract or
contracts on a competitive basis. This emergency spending
authority expires on the thirty-first day of December, two
thousand six;

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

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

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

(28) Upon termination of the commission, accomplish the
transfer to the insurance commissioner established in article
two-c of this chapter, the insurance commissioner, and any
other applicable state agency or department, of the functions
necessary for the regulation of the workers’ compensation
insurance industry, including, but not limited to, the following
commission functions: rate making, self-insurance, office of
judges and board of review. The executive director may select
persons that are assigned to these functions on the effective date
of the enactment of this section to be assigned and become employees of the company as established in article two-c of this chapter. The executive director may, in consultation with the insurance commissioner, select persons that are assigned to the insurance commissioner. The commission shall determine its fiscal year two thousand six budget for each of these functions, reduce the budget amount attributable to self-insured employers for these functions and shall make advanced quarterly payments to the insurance commissioner during fiscal year two thousand six for the actual operational expenses incurred as a direct result of this transfer. The amount shall include the funds necessary to operate the industrial council and the insurance commissioner shall be administratively responsible for the industrial council’s budget. Provided, That the payments and expenses shall be reconciled prior to the final fiscal year transfer and any unexpended amount shall be deducted from the final quarter’s payment. This reimbursement methodology shall repeat for fiscal year two thousand seven. Any amounts transferred under this section to the insurance commissioner shall be appropriated by the Legislature. For the final calendar quarter of two thousand five and the first and second calendar quarters of the year two thousand six, all self-insured employers shall remit to the insurance commissioner on a quarterly basis the administrative component of their fiscal year two thousand six rate. For the fiscal year beginning the first day of July, two thousand six, self-insured employers shall remit an administrative charge to the insurance commissioner in an amount determined by the commissioner. All self-insured employer advance deposits shall transfer from the commission to the insurance commissioner upon termination of the commission; and

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

CHAPTER 33. INSURANCE.

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.
§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

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

(b) The fraud unit may in its discretion:

(1) Initiate inquiries and conduct investigations when the unit has cause to believe violations of any of the following provisions of this code relating to the business of insurance have been or are being committed: Chapter twenty-three; chapter thirty-three; article three of chapter sixty-one; and section five, article four of chapter sixty-one.

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

(3) Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts.
(c) The insurance fraud unit may:

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

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

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

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

(5) Make criminal referrals to the county prosecutors;

(6) Conduct investigations outside this state. If the information the insurance fraud unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the insurance fraud unit to examine at the place where the information is located. The insurance fraud unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the insurance fraud unit, and the insurance fraud unit may respond to similar requests from officials of other states;

(7) The insurance fraud unit may initiate investigations and participate in the development of, and if necessary, the prosecu-
(8) Specific personnel, designated by the Commissioner, shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates;

(9) Notwithstanding any provision of this code to the contrary, specific personnel designated by the Commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the Governor’s committee on crime, delinquency and correction, which shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: Provided, That nothing in this subsection shall be construed to include any person designated by the Commissioner as a law-enforcement officer as that term is defined by the provisions of section one, article twenty-nine, chapter thirty of this code; and

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

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

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

(a) The Commissioner shall require any applicant for employment with the fraud unit to be fingerprinted. The Commissioner is authorized to conduct a criminal records check
through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of any criminal records or criminal history check shall be sent to the Commissioner. The West Virginia State Police may exchange this fingerprint data with the Federal Bureau of Investigation.

(b) The Director shall not disclose information obtained pursuant to subsection (a) of this section except for purposes directly related to the employment of the applicant.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White
Chairman Senate Committee

D. Reuben K Young
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell E. Sabes
Clerk of the Senate

Guy A. Syl
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Chester A.0. Jefferies
Speaker of the House of Delegates

The within bill has been approved this the 3rd day of May 2005.

Robert E. Fellmeth
Governor
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time 4:05 pm