WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED
Committee Substitute for
SENATE BILL NO. 418

(By Senators Tomblin, Mr. President, and Sprows)
(By Request of the Executive)

PASSED        April 9, 2005

In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 418

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

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

AN ACT to amend and reenact §33-2-9, §33-2-16 and §33-2-17 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-2-15d; to amend and reenact §33-3-33 of said code; to amend said code by adding thereto a new section, designated §33-6-15a; to amend said code by adding thereto two new sections, designated §33-11-4a and §33-11-4b; to amend and reenact §33-11-6 of said code; and to amend said code by adding thereto a new section, designated §33-20-4a, all relating generally to the regulation of insurance; increasing certain fees for property and casualty insurers; limiting these certain fees upon meeting special fund funding threshold; providing that Insurance Commissioner shall conduct a study and promulgate rules relating thereto; providing that the Director of Consumer Advocacy be appointed by the Governor; requiring that the Director of Consumer Advocacy be a
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licensed lawyer; expanding the authority of the Office of Consumer Advocacy; reducing a surcharge on fire and casualty insurance policies; modifying distribution of surcharge; providing for notice of savings in certain insurance policies; eliminating a cause of action for unfair claims settlement practices by third parties; establishing procedures for the filing, investigation and processing of administrative complaints by third-party claimants; defining certain terms; establishing special account to award restitution; providing for limited administrative restitution to third-party claimants in certain circumstances; providing for penalties for engaging in unfair claims settlement practices or general business practices; providing an internal contingent voiding provision; providing for judicial review of administrative process; limiting applicability of Act; and establishing that certain insurers shall submit rate filings biannually.

Be it enacted by the Legislature of West Virginia:

1 That §33-2-9, §33-2-16 and §33-2-17 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 §33-2-15d; that §33-3-33 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-6-15a; that said code be amended by adding thereto two new sections, designated §33-11-4a and §33-11-4b; that §33-11-6 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-20-4a, all to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

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

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

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

(1) “Commissioner” means the Commissioner of Insurance of this state;

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

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

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

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

(d) The Commissioner or his or her examiners shall, at a minimum, conduct an examination of every foreign or alien insurer licensed in this state not less frequently than once every five years. The examination of an alien insurer may be limited to its United States business: Provided, That in lieu of an examination under this section of any foreign or alien insurer licensed in this state, the Commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until the first day of January, one thousand nine hundred ninety-four. Thereafter, the reports may only be accepted if:

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

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

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

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

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

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

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

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

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

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

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

(6) Nothing contained in this section may be construed to limit the Commissioner's authority to terminate or suspend any examination, analysis or review in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. The Commissioner or his or her examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, analysis or review whether or not a written report of the examination has at that time either been made, served or filed in the Commissioner's Office;

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

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

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

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

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals the Commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:
(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule or prior order of the Commissioner, the Commissioner may order the company to take any action the Commissioner considers necessary and appropriate to cure the violation; or

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

(C) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information and testimony;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) (1) All property and casualty insurers subject to the provisions of this section shall annually pay to the Commissioner on or before the first day of July, one thousand nine hundred ninety-one, and every first day of July thereafter an examination assessment fee of up to five thousand dollars. Four hundred fifty dollars of this fee shall be paid to the treasurer of the state to the credit of a special revolving fund to be known as the Commissioner's Examination Revolving Fund which is hereby established; up to four thousand two hundred dollars shall be paid to the Treasurer of the state to the credit of the Unfair Claims Settlement Practice Trust Fund established in section four-b, article eleven of this chapter and three hundred fifty dollars shall be paid to the Treasurer of the state. If the Trust Fund has moneys in excess of one million dollars, the examination assessment fee shall be eight hundred dollars and the five thousand-dollar fee shall only be reinstated at whatever amount the Commissioner deems
necessary to maintain the Fund, if the Fund value goes below one million dollars. The Commissioner may at his or her discretion, upon notice to the insurers subject to this subsection, increase this examination assessment fee or levy an additional examination assessment fee of two hundred fifty dollars. In no event may the total examination assessment fee, including any additional examination assessment fee levied, exceed five thousand two hundred fifty dollars per insurer in any calendar year.

(2) All insurers other than property and casualty insurers subject to the provisions of this section shall annually pay to the Commissioner on or before the first day of July, one thousand nine hundred ninety-one, and every first day of July thereafter an examination assessment fee of eight hundred dollars. Four hundred fifty dollars of this fee shall be paid to the treasurer of the state to the credit of the Commissioner's Examination Revolving Fund and three hundred fifty dollars shall be paid to the treasurer of the state. The Commissioner may at his or her discretion, upon notice to the insurers subject to this subsection, increase this examination assessment fee or levy an additional examination assessment fee of two hundred fifty dollars. In no event may the total examination assessment fee, including any additional examination assessment fee levied, exceed one thousand five hundred dollars per insurer in any calendar year.

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

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

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

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

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

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

(2) No cause of action shall arise, nor shall any liability
be imposed, against any person for the act of communicat-
ing or delivering information or data to the Commissioner
or his or her examiners pursuant to an examination,
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479 analysis or review made under this section if the act of
480 communication or delivery was performed in good faith
481 and without fraudulent intent or the intent to deceive;
482 (3) The Commissioner or any examiner shall be entitled
to an award of attorney’s fees and costs if he or she is the
prevailing party in a civil cause of action for libel, slander
or any other relevant tort arising out of activities in
carrying out the provisions of this section and the party
bringing the action was not substantially justified in doing
so. For purposes of this section, a proceeding is “substan-
tially justified” if it had a reasonable basis in law or fact
at the time that it was initiated;
491 (4) This subsection does not abrogate or modify in any
way any constitutional immunity or common law or
statutory privilege or immunity heretofore enjoyed by any
person identified in subdivision (1) of this subsection.

§33-2-15d. Report to the Legislature.

1 (a) By the first day of January, two thousand seven, the
2 Commissioner shall submit a report to the Legislature.
The report shall contain analysis of the impact of legisla-
tion enacted during the two thousand five regular legisla-
tive session upon rates and insurance availability in the
state.

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

§33-2-16. Office of Consumer Advocacy established; Director of
Consumer Advocacy; promulgation of rules.
(a) There is hereby created within the agency of the Insurance Commissioner the Office of Consumer Advocacy. The position of Director of the Office of Consumer Advocacy is a full-time position. The Director shall be an attorney licensed in the State of West Virginia. The Director shall be appointed by the Governor for a term of four years to coincide with the term of the Governor and may be discharged only for failure to carry out the duties of the office or for other good and sufficient cause; Provided, That the current Director of the Office of Consumer Advocacy or other appointee of the Commissioner shall continue in the position until the Governor appoints a new Director.

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

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

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


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

1. Institute, intervene in, or otherwise participate in, as an advocate for the public interest and the interests of insurance consumers, proceedings in state and federal courts, before administrative agencies or before the Health Care Authority, concerning applications or proceedings before the Health Care Authority or the review of any act, failure to act or order of the Health Care Authority;
(2) At the request of one or more policyholders, or whenever the public interest is served, to advocate the interests of those policyholders in proceedings arising out of any filing made with the Insurance Commissioner by any insurance company or relating to any complaint alleging an unfair or deceptive act or practice in the business of insurance.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.
§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; public employees insurance agency and municipal pension plans; special fund created; allocation of proceeds; effective date.

(a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and certain retired teachers and the teachers retirement reserve fund, there is hereby authorized and imposed on and after the first day of July, one thousand nine hundred ninety-two, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy. After the thirtieth day of June, two thousand five, the surcharge shall be imposed as specified in subdivisions (2) and (3) of this subsection.

(2) After the thirtieth day of June, two thousand five, through the thirty-first day of December, two thousand five, for the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and to provide additional revenue to the public employees insurance agency and municipal pension plans, there is hereby authorized and imposed on and after the first day of July, two thousand five, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy.

(3) After the thirty-first day of December, two thousand five, for the purpose of providing additional revenue for volunteer fire departments and part-volunteer fire departments, there is hereby authorized and imposed on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy
(4) For purposes of this section, casualty insurance may not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. The policy surcharge may not be subject to premium taxes, agent commissions or any other assessment against premiums.

(b) The policy surcharge shall be collected and remitted to the Commissioner by the insurer, or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is issued by a risk retention group, by the risk retention group. The amount required to be collected under this section shall be remitted to the Commissioner on a quarterly basis on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before the first day of March of the succeeding year.

(c) Any person failing or refusing to collect and remit to the Commissioner any policy surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing is liable for a civil penalty of up to one hundred dollars for each day of delinquency, to be assessed by the Commissioner. The Commissioner may suspend the insurer, broker or risk retention group until all surcharge payments and penalties are remitted in full to the Commissioner.

(d)(1) All money from the policy surcharge shall be collected by the Commissioner who shall disburse the money received from the surcharge into a special account in the State Treasury, designated the Fire Protection Fund. The net proceeds of this portion of the tax and the interest
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thereon, after appropriation by the Legislature, shall be distributed quarterly on the first day of the months of January, April, July and October to each volunteer fire company or department on an equal share basis by the State Treasurer. After the thirtieth day of June, two thousand five, the money received from the surcharge shall be distributed as specified in subdivisions (2) and (3) of this subsection.

(2)(A) After the thirtieth day of June, two thousand five, through the thirty-first day of December, two thousand five, all money from the policy surcharge shall be collected by the Commissioner who shall disburse one-half of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(B) The remaining portion of moneys collected shall be transferred into the fund in the State Treasury of the public employees insurance agency into which are deposited the proportionate shares made by agencies of this state of the Public Employees Insurance Agency costs of those agencies, until the first day of November, two thousand five. After the thirty-first day of October, two thousand five, through the thirty-first day of December, two thousand five, the remaining portion shall be transferred to the special account in the State Treasury, known as the Municipal Pensions and Protection Fund.

(3) After the thirty-first day of December, two thousand five, all money from the policy surcharge shall be collected by the Commissioner who shall disburse all of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(4) Before each distribution date to volunteer fire companies or departments, the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer and part-volunteer fire companies and
105 departments within the state which meet the eligibility
106 requirements established in section eight-a, article fifteen,
107 chapter eight of this code.
108 (e) The allocation, distribution and use of revenues
109 provided in the Fire Protection Fund are subject to the
110 provisions of sections eight-a and eight-b, article fifteen,
111 chapter eight of this code.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-15a. Notation of consumer cost savings.

1 Each policy issued following enactment of this provision
2 during the two thousand five regular session, during the
3 year following the effective date, shall display in a promi-
4 nent location on the policy itself or on an insert included
5 with each policy and provided to each policyholder,
6 statements as following:

7 (1) “YOUR COSTS FOR THIS POLICY (HAVE/HAVE
8 NOT) BEEN REDUCED BY (insert savings amount here)
9 BECAUSE OF CIVIL JUSTICE REFORMS ENACTED BY
10 THE WEST VIRGINIA LEGISLATURE IN 2005, AND
11 SIGNED INTO LAW BY THE GOVERNOR”; and

12 (2) “YOUR COST FOR THIS POLICY HAS BEEN
13 REDUCED BY (insert savings amount here) BECAUSE OF
14 PREMIUM SURCHARGE REDUCTIONS ENACTED BY
15 THE WEST VIRGINIA LEGISLATURE IN 2005 AND
16 SIGNED INTO LAW BY THE GOVERNOR”.

17 If the insurer did not offer the type of insurance pro-
18 vided by the policy in two thousand four, the requirement
19 for these statements do not apply.

ARTICLE 11. UNFAIR TRADE PRACTICES.

§33-11-4a. Complaints by third-party claimants; elimination of
private cause of action.

1 (a) A third-party claimant may not bring a private cause
2 of action or any other action against any person for an
unfair claims settlement practice. A third-party claimant's sole remedy against a person for an unfair claims settlement practice or the bad faith settlement of a claim is the filing of an administrative complaint with the Commissioner in accordance with subsection (b) of this section. A third-party claimant may not include allegations of unfair claims settlement practices in any underlying litigation against an insured.

(b) A third-party claimant may file an administrative complaint against a person for an alleged unfair claims settlement practice with the Commissioner. The administrative complaint shall be filed as soon as practicable but in no event later than one year following the actual or implied discovery of the alleged unfair claims settlement practice.

(1) The administrative complaint shall be on a form provided by the Commissioner and shall state with specificity the following information and such other information as the Commissioner may require:

(A) The statutory provision, if known, which the person allegedly violated;

(B) The facts and circumstances giving rise to the violation;

(C) The name of any individual or other entity involved in the violation; and

(D) Reference to specific policy language that is relevant to the violation, if known.

(2) If the administrative complaint is deficient, the Commissioner shall contact the third-party claimant within fifteen days of receipt of the complaint to obtain the necessary information.

(3) Upon receipt of a sufficiently complete administrative complaint, the Commissioner must provide the person
against whom the administrative complaint is filed written
notice of the alleged violation.

(4) If the person against whom the administrative
complaint was filed substantially corrects the circum-
stances that gave rise to the violation or offers to resolve
the complaint in a manner found reasonable by the
Commissioner within sixty days after receiving the notice
from the Commissioner pursuant to subdivision (3) of this
subsection, the Commissioner shall close the complaint
and no further action shall lie on the matter, either by the
Commissioner or by the third party.

(5) The person that is the recipient of a notice from the
Commissioner pursuant to subdivision (3) of this subsec-
tion shall report to the Commissioner on the disposition of
the alleged violation within fifteen days of the disposition
but no later than sixty days from receipt of notice of the
complaint from the Commissioner.

(c) If the third-party claim is not resolved within the
sixty-day period described in subdivision (4), subsection
(b) of this section through either the person’s substantial
correction of the circumstances giving rise to the alleged
violation or an offer from the person to resolve the admin-
istrative complaint that is found to be reasonable by the
Commissioner, the Commissioner shall conduct any
investigation he or she considers necessary to determine
whether the allegations contained in the administrative
complaint are meritorious.

(d) Following the time period and investigation provided
in subsection (c) of this section, if the Commissioner finds
that merit exists for a complaint and the complaint has not
been resolved, the Commissioner shall forward a complete
copy of the complaint to the Office of Consumer Advocacy
and, if at his or her discretion, may order further investi-
gation and hearing to determine if the person has commit-
ted an unfair claims settlement practice with such fre-
quency as to constitute a general business practice. Notice
of any hearing shall be provided to all parties. The
Commissioner shall assign a time and place for a hearing
and shall notify the parties of the hearing by written
notice at least ten days in advance thereof. The hearing
shall be held within ninety days from the date of filing the
complaint unless the complaint has been successfully
resolved pursuant to subdivision (4), subsection (b) of this
section or continued by agreement of all parties or by the
Commissioner for good cause. The Commissioner shall
cause hearings to be conducted in the geographical region
of the state where the complainant resides. The Commis-
sioner may promulgate rules pursuant to article three,
chapter twenty-nine-a of this code necessary pursuant to
the authority of this chapter, to establish procedures to
conduct hearings pursuant to this section and chapter.

(e) If the Commissioner finds that the person has com-
mitted the unfair claim settlement practice with such
frequency as to constitute a general business practice, the
Commissioner may proceed to take administrative action
he or she considers appropriate in accordance with section
six of this article or as otherwise provided in this chapter.
If the Commissioner finds that the person engaged in any
method of competition, act or practice that involves an
intentional violation of subdivision (9), section four of this
article, and even though it has not been established that
the person engaged in a general business practice, the
Commissioner may proceed to take administrative action
he or she considers appropriate in accordance with
subsection (b), section six of this article. The person is
entitled to notice and hearing in connection with the
administrative proceeding.

(f) A finding by the Commissioner that the actions of a
person constitute a general business practice may only be
based on the existence of substantially similar violations
in a number of separate claims or causes of action.

(g) A good faith disagreement over the value of an action
or claim or the liability of any party to any action or claim
is not an unfair claims settlement practice.
(h) The Commissioner, pursuant to article three, chapter twenty-nine-a of this code, may promulgate by emergency rule standards for subsection (9), section four of this article.

(i) Nothing in this section in any way limits the rights of the Commissioner to investigate and take action against a person which the Commissioner has reason to believe has committed an unfair claims settlement practice or has consistently resolved administrative complaints by third-party claimants within the sixty-day period set forth in subdivision (4), subsection (b) of this section.

(j) Definitions:

(1) “Third-party claimant” means any individual, corporation, association, partnership or any other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract for the claim in question.

(2) “Unfair claims settlement practice” means a violation of subsection (9), section four of this article.

(3) “Underlying litigation” means a third-party claimant’s lawsuit involving a claim against an insured.

(4) “Underlying claim” means the claim by a third-party claimant against an insured.

§33-11-4b. Unfair Claims Settlement Practice Trust Fund.

(a) There is hereby created a special account in the State Treasury designated the Unfair Claims Settlement Practice Trust Fund, which shall be an interest-bearing account and may be invested in the manner permitted by section nine, article six, chapter twelve of this code, with the interest income or other refund earned thereon a proper credit to the fund. Funds paid into the account may also be derived from the following sources:

(1) Payments received pursuant to section nine, article two of this chapter; and

(2) Any appropriations by the Legislature which may be made for this purpose.

(b) The moneys from the principal in the fund shall be expended by the Commissioner to compensate claimants as provided in section four-a and six of this article.

§33-11-6. Violations, cease and desist and penalty orders and modifications thereof.

If, after notice and hearing, the Commissioner determines that any person has engaged in or is engaging in any method of competition, act or practice in violation of the provisions of this article or any rules or regulations promulgated by the Commissioner thereunder, the Commissioner shall issue an order directing the person to cease and desist from engaging in the method of competition, act or practice and, in addition thereto, the Commissioner may at his or her discretion order any one or more of the following:

(a) Require the payment to the State of West Virginia of a penalty in a sum not exceeding one thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of ten thousand dollars, unless the person knew or reasonably should have known he or she was in violation of this article, in which case the penalty shall not exceed five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of one hundred thousand dollars in any six-month period.

(b) In the event the act involves an intentional violation of subdivision (9), section four of this article, and even though it has not been established that the person engaged in a general business practice, require the payment to the State of West Virginia of a penalty in a sum not to exceed ten thousand dollars.
(c) Require the payment to the State of West Virginia of a penalty in a sum not exceeding two hundred fifty thousand dollars if the Commissioner finds that the insurer committed or performed unfair claims settlement practices with such frequency as to indicate a general business practice.

(d) Revoke or suspend the license of any person if he or she knew, or reasonably should have known, that he or she was in violation of this article.

(e)(1) Provide restitution from the Unfair Claims Settlement Practice Trust Fund to a claimant who has suffered damages as a result of a general business practice or from an egregious act by a person whether or not the act constituted a pattern corresponding to an unfair claims settlement practice committed with such frequency as to constitute a general business practice.

(2) Restitution provided herein may include: (A) Actual economic damages; and (B) noneconomic damages not to exceed ten thousand dollars. Restitution may not be given for attorney fees and punitive damages.

(f) It is expressly understood and intended that the provisions of paragraph (1), subdivision (e) of this section do not create a private cause of action against the person that has committed an unfair claims settlement practice. In the event that any provision of said paragraph is found to be unconstitutional or is deemed by any court of competent jurisdiction to create a private cause of action, then subdivision (e) shall be void.

(g) Any person aggrieved by an order of the Commissioner under this article may seek judicial review of the order as provided in section fourteen, article two of this chapter.

(h) No order of the Commissioner pursuant to this article or order of any court to enforce it, or holding of a hearing, shall in any manner relieve or absolve any person affected
by the order or hearing from any other liability, penalty or
forfeiture under law.

(i) The provisions of section four-a of this article and
subdivision (e) of this section do not apply to medical
professional liability insurance claims pursuant to article
seven-b, chapter fifty-five of this code and workers
compensation insurance policies governed by article two-c,
chapter twenty-three of this code.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-4a. Biannual rate filings for certain insurance lines.

On or before the first day of July, two thousand five, the
Commissioner shall promulgate legislative rules pursuant
to article three, chapter twenty-nine-a of this code estab-
lishing procedures whereby each insurer providing five
percent or more of insurance coverage in this state for
private passenger automobile insurance and property
insurance obtained for personal or family needs shall
biannually submit rate filings required under this section:
Provided, That the requirements under this subsection
shall terminate on the first day of July, two thousand nine.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 29th Day of April, 2005.

Governor
PRESENTED TO THE GOVERNOR

APR 27 2005

Time 10:05 Am