

SB 643 S

FILED

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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 643

(SENATOR MINARD, *original sponsor*)

[Passed March 9, 2007; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-2-3a; and to amend and reenact §33-2-7 and §33-2-19 of said code, all relating to investigations of violations of insurance laws; clarifying that the Insurance Commissioner may investigate noncriminal violations; authorizing use of Class A registration plates; clarifying that immunity granted in certain cases applies to criminal prosecutions only; and clarifying the authority and duties

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of the Insurance Commissioner with regard to information obtained during investigations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-2-3a; and that §33-2-7 and §33-2-19 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-3a. Administrative investigations.

1 (a) In addition to the authority granted to the fraud
2 unit created in article forty-one of this chapter and to
3 the workers' compensation fraud and abuse unit
4 previously transferred to the commissioner pursuant to
5 section one-b, article one, chapter twenty-three of this
6 code, the commissioner has the authority to conduct
7 investigations whenever he or she has cause to believe
8 that a violation of any provision of this chapter or of
9 chapter twenty-three of this code has been or is being
10 committed.

11 (b) Employees designated by the commissioner are
12 permitted to operate vehicles owned or leased by the
13 state displaying Class A registration plates when
14 engaged in carrying out the investigative duties
15 assigned to the commissioner by this chapter.

§33-2-7. Immunity of witness.

1 If any person shall ask to be excused from attending
2 and testifying or from producing any books, papers,
3 records, correspondence or other documents at any

4 hearing conducted pursuant to this chapter or chapter
5 twenty-three of this code or in any cause or proceeding
6 instituted by the commissioner pursuant to this chapter
7 or chapter twenty-three of this code on the ground that
8 the testimony or evidence required of him may tend to
9 incriminate him or subject him to a criminal penalty
10 and shall notwithstanding be directed by the
11 commissioner to give such testimony or produce such
12 evidence, he must nonetheless comply with such
13 direction, but he shall not thereafter be prosecuted or
14 subjected to any criminal penalty for or on account of
15 any matter or thing concerning which he may testify or
16 produce evidence, pursuant thereto, and no testimony so
17 given or evidence produced shall be received against
18 him upon any criminal action, investigation or
19 proceeding: *Provided*, That no such individual so
20 testifying shall be exempt from prosecution or
21 punishment for any perjury or false swearing,
22 committed by him while so testifying and the testimony
23 or evidence so given or produced is admissible against
24 him upon any criminal action, investigation or
25 proceeding concerning such perjury or false swearing,
26 nor is he exempt from the refusal, revocation or
27 suspension of any license, permission or authority
28 conferred, or to be conferred, pursuant to this chapter.
29 Any such individual may execute, acknowledge and file
30 in the office of the commissioner a statement expressly
31 waiving such immunity or privilege in respect to any
32 transaction, matter or thing specified in such statement
33 and thereupon the testimony of such person or such
34 evidence in relation to such transaction, matter or thing
35 may be received or produced before any judge or justice,
36 court, tribunal, grand jury or otherwise, and if so
37 received or produced such individual is not entitled to
38 any immunity or privilege on account of any testimony

39 he may so give or evidence so produced.

§33-2-19. Confidentiality of information.

1 (a) Documents, materials or other information in the
2 possession or control of the commissioner that are
3 obtained in an investigation of any suspected violation
4 of any provision of this chapter or chapter twenty-three
5 of this code are confidential by law and privileged, are
6 not subject to the provisions of chapter twenty-nine-b
7 of this code and are not open to public inspection. The
8 commissioner may use the documents, materials or
9 other information in the furtherance of any regulatory
10 or legal action brought as a part of the commissioner's
11 official duties. The commissioner may use the
12 documents, materials or other information if they are
13 required for evidence in criminal proceedings or for
14 other action by the state or federal government and in
15 such context may be discoverable only as ordered by a
16 court of competent jurisdiction exercising its discretion.

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

25 (c) In order to assist in the performance of the
26 commissioner's duties, the commissioner may:

27 (1) Share documents, materials, communications or
28 information, including otherwise confidential and

29 privileged documents, materials or information, with
30 other state, federal and international regulatory
31 agencies, with the National Association of Insurance
32 Commissioners and its affiliates and subsidiaries, and
33 with regulatory and law-enforcement officials of other
34 foreign or domestic jurisdictions: *Provided*, That the
35 recipient agrees to maintain the confidentiality and
36 privileged status of the document, material,
37 communication or other information;


38 (2) Receive documents, materials, communications or
39 information, including otherwise confidential and
40 privileged documents, materials or information, from
41 the National Association of Insurance Commissioners
42 and its affiliates and subsidiaries and from regulatory
43 and law-enforcement officials of other foreign or
44 domestic jurisdictions and shall maintain as
45 confidential or privileged any document, material or
46 information received with notice or the understanding
47 that it is confidential or privileged under the laws of the
48 jurisdiction that is the source of the document, material
49 or information; and

50 (3) Enter into agreements governing sharing and use
51 of information consistent with this subsection.

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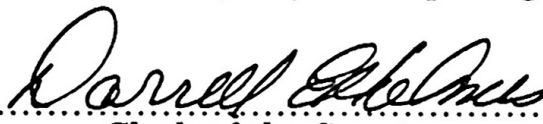
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

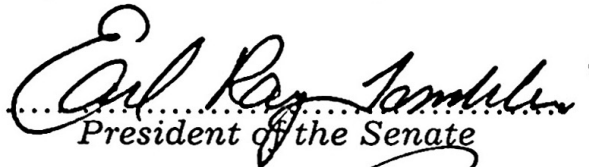

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Chairman House Committee

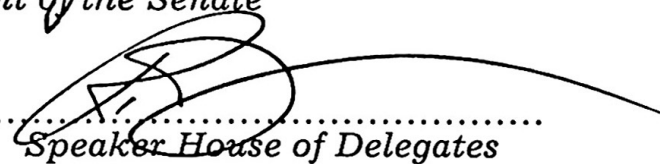
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this
the 3rd Day of April, 2007.


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Governor

PRESENTED TO THE
GOVERNOR

APR 03 2007

Time 1:40 p