WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 643

(Senator Minard, original sponsor)

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

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

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


If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any
hearing conducted pursuant to this chapter or chapter
twenty-three of this code or in any cause or proceeding
instituted by the commissioner pursuant to this chapter
or chapter twenty-three of this code on the ground that
the testimony or evidence required of him may tend to
incriminate him or subject him to a criminal penalty
and shall notwithstanding be directed by the
commissioner to give such testimony or produce such
evidence, he must nonetheless comply with such
direction, but he shall not thereafter be prosecuted or
subjected to any criminal penalty for or on account of
any matter or thing concerning which he may testify or
produce evidence, pursuant thereto, and no testimony so
given or evidence produced shall be received against
him upon any criminal action, investigation or
proceeding: Provided, That no such individual so
testifying shall be exempt from prosecution or
punishment for any perjury or false swearing,
committed by him while so testifying and the testimony
or evidence so given or produced is admissible against
him upon any criminal action, investigation or
proceeding concerning such perjury or false swearing,
nor is he exempt from the refusal, revocation or
suspension of any license, permission or authority
conferred, or to be conferred, pursuant to this chapter.
Any such individual may execute, acknowledge and file
in the office of the commissioner a statement expressly
waiving such immunity or privilege in respect to any
transaction, matter or thing specified in such statement
and thereupon the testimony of such person or such
evidence in relation to such transaction, matter or thing
may be received or produced before any judge or justice,
court, tribunal, grand jury or otherwise, and if so
received or produced such individual is not entitled to
any immunity or privilege on account of any testimony
he may so give or evidence so produced.


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

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

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

(1) Share documents, materials, communications or information, including otherwise confidential and
privileged documents, materials or information, with
other state, federal and international regulatory
agencies, with the National Association of Insurance
Commissioners and its affiliates and subsidiaries, and
with regulatory and law-enforcement officials of other
foreign or domestic jurisdictions: Provided, That the
recipient agrees to maintain the confidentiality and
privileged status of the document, material,
communication or other information;

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

(3) Enter into agreements governing sharing and use
of information consistent with this subsection.
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 3rd Day of April, 2007.

Governor
PRESENTED TO THE
GOVERNOR

APR 03 2007

Time 1:40 pm