

HB 4381

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4381

(By Delegates Kominar, Moore, Barker, Perry,
Schoen, Ashley and Walters)

Passed March 7, 2008

In Effect from Passage

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H. B. 4381

(BY DELEGATES KOMINAR, MOORE, BARKER, PERRY,
SCHOEN, ASHLEY AND WALTERS)

[Passed March 7, 2008; in effect from passage.]

AN ACT to repeal §23-2C-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §23-2C-2 and §23-2C-10 of said code; and to amend and reenact §33-26-3, §33-26-5, §33-26-6, §33-26-8 and §33-26-12 of said code, all relating to an assigned risk plan and guaranty association account for workers' compensation insurance; defining terms; eliminating certain funds in the treasurer's office and transferring moneys in such funds to the Old Fund; eliminating the requirement that private carriers maintain an office in this state; providing for the establishment and operation of an assigned risk plan; making workers' compensation insurance applicable to the Insurance Guaranty Association Act; establishing a new account to be administered by the West Virginia Insurance Guaranty Association; modifying standards for paying duplicate claims; and providing that limits on benefits payable by the guaranty association are not applicable to obligations arising out of workers' compensation insurance.

Be it enacted by the Legislature of West Virginia:

That §23-2C-9 of the Code of West Virginia, 1931, as amended, be repealed; that §23-2C-2 and §23-2C-10 of said code be amended and reenacted; and that §33-26-3, §33-26-5, §33-26-6, §33-26-8 and §33-26-12 of said code be amended and reenacted, all to read as follows:

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-2. Definitions.

1 (a) "Executive director" means the Executive Director of
2 the West Virginia Workers' Compensation Commission as
3 provided in section one-b, article one of this chapter.

4 (b) "Commission" means the West Virginia Workers'
5 Compensation Commission as provided by section one,
6 article one of this chapter.

7 (c) "Insurance Commissioner" means the Insurance
8 Commissioner of West Virginia as provided in section one,
9 article two, chapter thirty-three of this code.

10 (d) "Company" or "successor to the commission" means
11 the employers' mutual insurance company created pursuant
12 to the terms of this article.

13 (e) "Policy default" means a policyholder that has failed
14 to comply with the terms of its workers' compensation
15 insurance policy and is consequently without workers'
16 compensation insurance coverage.

17 (f) “Workers’ compensation insurance” means insurance
18 which provides all compensation and benefits required by
19 this chapter.

20 (g) “Insurer” includes:

21 (1) A self-insured employer; and

22 (2) A private carrier.

23 (h) “Industrial Council” means the advisory group
24 established in section five of this article.

25 (i) “Mutualization Transition Fund” is a fund over which
26 the State Treasurer is custodian. Moneys transferred or
27 otherwise payable to the Mutualization Transition Fund shall
28 be deposited in the State Treasury to the credit of the
29 Mutualization Transition Fund. Disbursements shall be made
30 from the Mutualization Transition Fund upon requisitions
31 signed by the executive director, and, upon termination of the
32 commission, the Insurance Commissioner, and shall be
33 reasonably related to the legal, operational, consultative and
34 human resource-related expenses associated with the
35 establishment of the company and the transferring of
36 personnel from the commission to the company.

37 (j) “New Fund” means a fund owned and operated by the
38 commission and, upon termination of the commission, the
39 successor organization of the West Virginia Workers’
40 Compensation Commission and consists of those funds
41 transferred to it from the Workers’ Compensation Fund and
42 any other applicable funds. New Fund includes all moneys
43 due and payable to the Workers’ Compensation Fund for the
44 quarters ending the thirtieth day of September, two thousand
45 five, and the thirty-first day of December, two thousand five,
46 which have not been collected by the Workers’ Compensation

47 Fund as of the thirty-first day of December, two thousand
48 five.

49 (k) "New Fund liabilities" means all claims payment
50 obligations (indemnity and medical expenses) for all claims,
51 actual and incurred but not reported, for any claim with a date
52 of injury or last exposure on or after the first day of July, two
53 thousand five: *Provided*, That New Fund liabilities begin
54 with claims payments becoming due and owing on said
55 claims on or after the first day of January, two thousand six.

56 (l) "Old Fund" means a fund held by the State Treasurer's
57 office consisting of those funds transferred to it from the
58 Workers' Compensation Fund or other sources and those
59 funds due and owing the Workers' Compensation Fund as of
60 the thirtieth day of June, two thousand five, that are thereafter
61 collected. The Old Fund and assets in the fund remain
62 property of the state and do not novate or otherwise transfer
63 to the company.

64 (m) "Old Fund liabilities" mean all claims payment
65 obligations (indemnity and medical expenses), related
66 liabilities and appropriate administrative expenses necessary
67 for the administration of all claims, actual and incurred but
68 not reported, for any claim with a date of injury or last
69 exposure on or before the thirtieth day of June, two thousand
70 five: *Provided*, That Old Fund liabilities include all claims
71 payments for any claim, regardless of date of injury or last
72 exposure, through the thirty-first day of December, two
73 thousand five: *Provided, however*, That Old Fund liabilities
74 include all claims with dates of injuries or last exposure prior
75 to the first day of July, two thousand four, for bankrupt
76 self-insured employers that had defaulted on their claims
77 obligations which have been recognized by the commission
78 in its actuarially determined liability number as of the
79 thirtieth day of June, two thousand five.

80 (n) "Private carrier" means any insurer or the legal
81 representative of an insurer authorized by the Insurance
82 Commissioner to provide workers' compensation insurance
83 pursuant to this chapter. The term does not include a
84 self-insured employer or private employers but does include
85 any successor to the commission.

86 (o) "Uninsured Employer Fund" means a fund held by
87 the State Treasurer's office consisting of those funds
88 transferred to it from the Workers' Compensation Fund and
89 any other source. Disbursements from the Uninsured
90 Employer Fund shall be upon requisitions signed by the
91 Insurance Commissioner, and as otherwise set forth in an
92 exempt legislative rule promulgated by the Workers'
93 Compensation Board of Managers.

94 (p) "Self-Insured Employer Guaranty Risk Pool" is a
95 fund held by the State Treasurer's office consisting of those
96 funds transferred to it from the guaranty pool created
97 pursuant to 85 CSR 19 (2007) and any future funds collected
98 through continued administration of that exempt legislative
99 rule as administered by the Insurance Commissioner.
100 Disbursements shall be made from the Self-Insured Employer
101 Guaranty Risk Pool upon requisitions signed by the Insurance
102 Commissioner. The obligations of the fund are as provided in
103 85 CSR 19 (2007).

104 (q) "Self-Insured Employer Security Risk Pool" is a fund
105 held by the State Treasurer consisting of those funds paid into
106 it through the Insurance Commissioner's administration of 85
107 CSR 19 (2007). Disbursement from the fund shall be made
108 from the Self-Insured Employer Security Risk Pool upon
109 requisitions signed by the Insurance Commissioner. The
110 obligations of the fund are as provided in 85 CSR 19:
111 *Provided*, That the liabilities are limited to those self-insured
112 employers who default on their claims obligations after the
113 termination of the commission.

114 (r) "Private Carrier Guaranty Fund" is a fund held by the
115 State Treasurer's office consisting of funds deposited
116 pursuant to this article. Disbursements shall be made from
117 the Private Carrier Guaranty Fund upon requisitions signed
118 by the Insurance Commissioner. The obligations of the fund
119 are as provided in this article. The Private Carrier Guaranty
120 Fund terminates on the thirtieth day of June, two thousand
121 eight, and any moneys remaining in the fund on the date of
122 its termination shall be transferred to the Old Fund.

123 (s) "Assigned Risk Fund" is a fund held by the State
124 Treasurer's office consisting of funds deposited pursuant to
125 this article. Disbursements shall be made from the Assigned
126 Risk Fund upon requisitions signed by the Insurance
127 Commissioner. The obligations of the fund are as provided
128 in this article. The Assigned Risk Fund terminates on the
129 thirtieth day of June, two thousand eight, and any moneys
130 remaining in the fund on the date of its termination shall be
131 transferred to the Old Fund.

132 (t) "Comprehensive financial plan" means the plan
133 compiled by the director for acceptance by the Insurance
134 Commissioner identifying and forecasting cash flows,
135 funding sources, debt terms and structures and scheduled
136 amortization and permanent resolution of all Old Fund
137 liabilities. The comprehensive financial plan shall provide
138 for the retirement of the revenue bonds authorized by article
139 two-d of this chapter and all realized and potential claims
140 against the Old Fund shall be fully reserved. The
141 comprehensive financial plan may include any other
142 information the Insurance Commissioner may require as a
143 basis for managing the post-transition fiscal soundness of the
144 Old Fund.

145 (u) "Voluntary market" means the workers'
146 compensation insurance market in which insurers voluntarily

147 offer coverage to applicants who meet the insurers'
148 underwriting standards or guidelines.

§23-2C-10. West Virginia adverse risk assignment.

1 (a) The Insurance Commissioner shall provide for the
2 development and administration of an assigned risk plan to
3 provide workers' compensation insurance coverage to
4 employers who are unable to procure coverage in the
5 voluntary market.

6 (b) To qualify for coverage under the plan, an employer
7 must have been categorically declined coverage by at least
8 two insurers that are not affiliated with each other. The
9 employer has the burden of establishing that at least two
10 unaffiliated insurers are unwilling to provide coverage at any
11 premium level that is reasonably related to the risk presented
12 by the employer. The assigned risk plan may also provide for
13 other reasonable qualifications and for the termination of
14 coverage under the plan for specified reasons.

15 (c) Any employer that satisfies the requirements of
16 subsection (b) of this section and other qualifications
17 established in the plan shall be provided coverage at a
18 premium level to be determined or approved by the Insurance
19 Commissioner, which premiums shall be actuarially sound,
20 consistent with classification and rate-making methodologies
21 found in the insurance industry, and calculated to enable the
22 plan to be self-sustaining and, to the greatest extent possible,
23 able to operate without subsidies from employers and
24 insurers in the voluntary market. Rates may not be excessive,
25 inadequate or unfairly discriminatory.

26 (d) The Insurance Commissioner may designate any
27 third party, including any private carrier or rating
28 organization with substantial experience in developing and

29 administering similar programs in other states, to develop and
30 administer the assigned risk plan for a period of three years,
31 and thereafter, shall contract with any qualified party,
32 including the then current administrator, to continue the
33 administration of the assigned risk plan: *Provided*, That the
34 Insurance Commissioner must approve the plan prior to the
35 plan becoming operative. The plan established pursuant to
36 this section shall require that all private carriers participate as
37 a condition of their authority to transact business in this state.

38 (e) In the event the plan incurs a deficit in one or more
39 policy years, the Insurance Commissioner may assess all
40 private carriers providing Workers' Compensation insurance
41 in voluntary market funds as are necessary to cover the
42 deficits. The assessments shall result in an equitable
43 distribution of costs among private carriers based upon
44 premiums received by the private carriers in the private
45 market. Assessments made upon the policies of each private
46 carrier pursuant to this section may be collected by each
47 carrier in the form of a surcharge.

CHAPTER 33. INSURANCE.

ARTICLE 26. WEST VIRGINIA GUARANTY ASSOCIATION ACT.

§33-26-3. Scope.

1 This article applies to all kinds of direct insurance, except
2 life, title, surety, disability, credit, mortgage guaranty and
3 ocean marine insurance.

§33-26-5. Definitions.

1 As used in this article:

2 (1) "Account" means any one of the three accounts
3 created by section six of this article.

4 (2) "Association" means the West Virginia Insurance
5 Guaranty Association created under section six of this article.

6 (3) "Commissioner" means the Insurance Commissioner
7 of West Virginia.

8 (4) "Covered claim" means an unpaid claim, including
9 one for unearned premiums other than retrospective
10 premiums or other premiums subject to adjustment after the
11 date of liquidation, which arises out of and is within the
12 coverage of an insurance policy to which this article applies
13 and which policy is in force at the time of the occurrence
14 giving rise to the unpaid claims if the insurer issuing the
15 policy becomes an insolvent insurer after the effective date of
16 this article and the claimant or insured is a resident of this
17 state at the time of the insured occurrence, or the property
18 from which the claim arises is permanently located in this
19 state. "Covered claim" does not include (i) any amount in
20 excess of the applicable limits of coverage provided by an
21 insurance policy to which this article applies; nor (ii) any
22 amount due any reinsurer, insurer, insurance pool, or
23 underwriting association, as subrogation recoveries or
24 otherwise from an insolvent insurer or the insured of an
25 insolvent insurer to the extent of coverage under the insured's
26 policy.

27 (5) "Insolvent insurer" means an insurer:

28 (A) Licensed to transact insurance in this state either at
29 the time the policy was issued or when the insured event
30 occurred; and

31 (B) Against whom an order of liquidation with a finding
32 of insolvency has been entered by a court of competent
33 jurisdiction in the insurer's state of domicile or of this state.

34 (6) "Member insurer" means any person who:

35 (A) Writes any kind of insurance to which this article
36 applies under section three of this article, including farmers'
37 mutual fire insurance companies and the exchange of
38 reciprocal or interinsurance contracts; and

39 (B) Is licensed to transact insurance in this state.

40 (7) "Net direct written premiums" means direct gross
41 premiums written in this state on insurance policies to which
42 this article applies, less return premiums on the policies and
43 dividends paid or credited to policyholders on such direct
44 business. "Net direct written premiums" does not include
45 premiums on contracts between insurers or reinsurers.

46 (8) "Person" includes an individual, company, insurer,
47 association, organization, society, reciprocal, partnership,
48 syndicate, business trust, corporation or any other legal
49 entity.

50 (9) "Receiver" means receiver, liquidator, rehabilitator or
51 conservator as the context may require.

§33-26-6. Creation of the association.

1 There is created a nonprofit unincorporated legal entity
2 to be known as the West Virginia Insurance Guaranty
3 Association. All insurers defined as member insurers in
4 section five of this article shall be and remain members of the
5 association as a condition of their authority to transact

6 insurance in this state. The association shall perform its
7 functions under a plan of operation established and approved
8 under section nine of this article and shall exercise its powers
9 through a board of directors established under section seven
10 of this article. For purposes of administration and
11 assessment, the association shall establish and maintain three
12 separate accounts:

13 (1) The automobile insurance account;

14 (2) The workers' compensation insurance account; and

15 (3) The account for all other insurance to which this
16 article applies.

§33-26-8. Powers and duties of the association.

1 (1) The association:

2 (a) Is obligated to the extent of the covered claims
3 existing prior to the determination of insolvency, and for
4 those claims arising within thirty days after the determination
5 of insolvency, but the obligation only includes that amount of
6 each covered claim which is in excess of one hundred dollars
7 and is less than three hundred thousand dollars: *Provided,*
8 That neither of these monetary limits applies to obligations
9 arising out of covered workers' compensation claims. In no
10 event is the association obligated to a policyholder or
11 claimant in an amount in excess of the obligations of the
12 insolvent insurer under the policy from which the claim
13 arises. Notwithstanding any other provision of this article, a
14 covered claim does not include any claim filed with the
15 guaranty fund after the final date set by the court for the
16 filing of claims against the liquidator or receiver of an
17 insolvent insurer. A default judgment or stipulated judgment

18 against the insolvent insurer, or against the insured of an
19 insolvent insurer, is not binding against the association.

20 (b) Is the insurer to the extent of its obligation on the
21 covered claims and to such extent has all rights, duties,
22 defenses and obligations of the insolvent insurer as if the
23 insurer had not become insolvent.

24 (c) Shall allocate claims paid and expenses incurred
25 among the three accounts separately, and assess member
26 insurers separately for each account amounts necessary to
27 pay the obligations of the association under subdivision (a)
28 of this subsection subsequent to an insolvency, the expenses
29 of handling covered claims subsequent to an insolvency, the
30 cost of examinations under section thirteen of this article and
31 other expenses authorized by this article. The assessments of
32 each member insurer shall be in the proportion that the net
33 direct written premiums of the member insurer for the
34 preceding calendar year on the kinds of insurance in the
35 account bears to the net direct written premiums of all
36 member insurers for the preceding calendar year on the kinds
37 of insurance in the account. *Provided*, That farmers mutual
38 insurance companies that do not issue worker's compensation
39 insurance policies may not be assessed to pay for the
40 obligations of the association payable from the workers'
41 compensation insurance account. Each member insurer shall
42 be notified of the assessment not later than thirty days before
43 it is due. No member insurer may be assessed in any one
44 year on any account an amount greater than two percent of
45 that member insurer's net direct written premiums for the
46 preceding calendar year on the kinds of insurance in the
47 account. If the maximum assessment, together with the other
48 assets of the association in any account, does not provide in
49 any one year in any account an amount sufficient to make all
50 necessary payments from that account, the funds available

51 shall be prorated and the unpaid portion shall be paid as soon
52 after that as funds become available. The association may
53 exempt or defer, in whole or in part, the assessment of any
54 member insurer, if the assessment would cause the member
55 insurer's financial statement to reflect the amounts of capital
56 or surplus less than the minimum amounts required for a
57 certificate of authority by any jurisdiction in which the
58 member insurer is authorized to transact insurance. Each
59 member insurer may set off against any assessment,
60 authorized payments made on covered claims and expenses
61 incurred in the payment of such claims by the member
62 insurer if they are chargeable to the account for which the
63 assessment is made.

64 (d) Shall investigate claims brought against the
65 association and adjust, compromise, settle, and pay covered
66 claims to the extent of the association's obligation and deny
67 all other claims and may review settlements, releases and
68 judgments to which the insolvent insurer or its insureds were
69 parties to determine the extent to which the settlements,
70 releases and judgments may be properly contested.

71 (e) Shall notify persons as the commissioner directs under
72 subsection (2), section ten of this article.

73 (f) Shall handle claims through its employees or through
74 one or more insurers or other persons designated as servicing
75 facilities. Designation of a servicing facility is subject to the
76 approval of the commissioner, but the designation may be
77 declined by a member insurer.

78 (g) Shall reimburse each servicing facility for obligations
79 of the association paid by the facility and for expenses
80 incurred by the facility while handling claims on behalf of the
81 association and shall pay the other expenses of the
82 association authorized by this article.

83 (2) The association may:

84 (a) Employ or retain persons that are necessary to handle
85 claims and perform other duties of the association.

86 (b) Borrow funds necessary to effect the purposes of this
87 article in accord with the plan of operation.

88 (c) Sue or be sued.

89 (d) Negotiate and become a party to contracts that are
90 necessary to carry out the purpose of this article.

91 (e) Perform other acts that are necessary or proper to
92 effectuate the purpose of this article.

93 (f) Refund to the member insurers in proportion to the
94 contribution of each member insurer to an account that
95 amount by which the assets of the account exceed the
96 liabilities, if, at the end of any calendar year, the board of
97 directors finds that the assets of the association in any
98 account exceed the liabilities of that account as estimated by
99 the board of directors for the coming year.

§33-26-12. Nonduplication of recovery.


1 (1) Any person having a claim against a solvent insurer
2 under any provision in an insurance policy other than a policy
3 of an insolvent insurer, which is also a covered claim, is
4 required to exhaust first his or her right under the solvent
5 insurer's policy. Any amount payable on a covered claim
6 under this article shall be reduced by the amount of any
7 recovery under the solvent insurer's policy.

8 (2) Any person having a claim which may be recovered
9 under more than one Insurance Guaranty Association or its

10 equivalent shall seek recovery first from the association of
11 the place of residence of the insured except that if it is a first
12 party claim for damage to property with a permanent
13 location, he or she shall seek recovery first from the
14 association of the location of the property, and if it is a
15 workers' compensation claim, the person shall seek recovery
16 first from the association of the residence of the claimant.
17 Any recovery under this article shall be reduced by the
18 amount of the recovery from any other insurance guaranty
19 association or its equivalent.

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


Chairman Senate Committee


Chairman House Committee

Originating in the House.

In effect from passage.

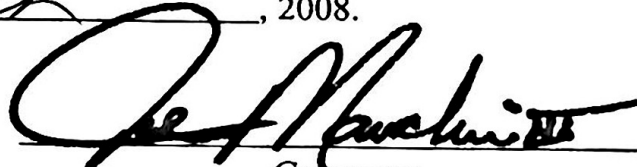

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 21st
day of March, 2008.


Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2008

Time 9:30am