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**WEST VIRGINIA LEGISLATURE**  
**EIGHTIETH LEGISLATURE**  
**REGULAR SESSION, 2011**

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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 408**

(SENATORS MINARD, FOSTER, JENKINS,  
KESSLER (ACTING PRESIDENT), CHAFIN AND  
STOLLINGS, ORIGINAL SPONSORS)

[PASSED MARCH 12, 2011; IN EFFECT NINETY DAYS FROM PASSAGE.]

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OFFICE OF THE  
SECRETARY OF STATE

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**Senate Bill No. 408**

(SENATORS MINARD, FOSTER, JENKINS, KESSLER  
(ACTING PRESIDENT), CHAFIN AND STOLLINGS, *original sponsors*)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8 and §33-16G-9, all relating generally to the establishment of a West Virginia Health Benefit Exchange; setting forth purpose; defining terms; providing for the establishment of the West Virginia Health Benefit Exchange; establishing the governing board of directors; providing for membership on the board of directors; setting forth meeting requirements of the board of directors; allowing the board of directors to hire an executive director and appropriate staff; exempting employees from classified service; providing for an annual report by the board of directors; setting forth the functions of the board; outlining the board's duties and authority; providing for the response of the board in the event of reduction of federal funding or legislative or judicial

invalidation of federal act; authorizing emergency and legislative rulemaking; establishing a special revenue account; training; purchasing exemption; and authorizing assessment of fees.

*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 article, designated §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8 and §33-16G-9, all to read as follows:

**ARTICLE 16G. WEST VIRGINIA HEALTH BENEFIT EXCHANGE ACT.**

**§33-16G-1. Purpose.**

1 The purpose of this article is to establish a West Virginia  
2 Health Benefit Exchange to facilitate the purchase and sale  
3 of qualified health plans in the individual market in this  
4 state and a Small Business Health Options Program within  
5 the exchange to assist qualified small employers in this state  
6 in facilitating the enrollment of their employees in qualified  
7 health plans.

**§33-16G-2. Definitions.**

1 For purposes of this article:

2 (a) "Board" means the board established in section four of  
3 this article.

4 (b) "Commissioner" means the West Virginia Insurance  
5 Commissioner.

6 (c) "Exchange" means the West Virginia Health Benefit  
7 Exchange established pursuant to section three of this  
8 article.

9 (d) "Federal Act" means the Federal Patient Protection and  
10 Affordable Care Act (Public Law 111-148), as amended by  
11 the federal Health Care and Education Reconciliation Act of

12 2010 (Public Law 111-152), and any amendments thereto, or  
13 regulations or guidance issued thereunder.

14 (e) “Health carrier” or “carrier” means an entity subject to  
15 the insurance laws of this state, or subject to the jurisdiction  
16 of the commissioner, that contracts or offers to contract to  
17 provide, deliver, arrange for, pay for, or reimburse any of the  
18 costs of health care services, including a sickness and  
19 accident insurance company, a health maintenance organiza-  
20 tion, a nonprofit hospital and health service corporation, or  
21 any other entity providing a plan of health insurance, health  
22 benefits or health services.

23 (f) “Secretary” means the Secretary of the United States  
24 Department of Health and Human Services.

25 (g) “SHOP Exchange” means the Small Business Health  
26 Options Program established under this article.

27 (h) “Small employer” means an employer that employed an  
28 average of not more than fifty employees during the preced-  
29 ing calendar year.

### **§33-16G-3. Establishment of exchange.**

1 (a) There is established within the Offices of the Insurance  
2 Commissioner an entity known as the West Virginia Health  
3 Benefit Exchange. This is a governmental entity of the state.

4 (b) The exchange shall pursue available federal funding for  
5 operation of the exchange and shall promulgate rules  
6 necessary to obtain federal recognition of the exchange as a  
7 certified exchange under the Federal Act.

8 (c) The exchange may accept gifts, grants and bequests,  
9 contract with other persons, and enter into memoranda of  
10 understanding with other governmental agencies to carry out  
11 any of its functions, including agreements with other states  
12 to perform joint administrative functions. The provisions of  
13 article three, chapter five-a of this code relating to the

14 Purchasing Division of the Department of Administration do  
15 not apply to these contracts: *Provided*, That these contracts  
16 shall be awarded on a competitive basis. The exchange may  
17 not enter into contracts with any health insurance carrier or  
18 an affiliate of a health insurance carrier.

19 (d) The exchange may enter into information-sharing  
20 agreements with federal and state agencies and other state  
21 exchanges to carry out its responsibilities under this article,  
22 provided such agreements include adequate protections with  
23 respect to the confidentiality of the information to be shared  
24 and comply with all state and federal laws and regulations.

**§33-16G-4. Duties of exchange; decrease in funding or invalidation of the Federal Act.**

1 (a) In carrying out the duties under this article, the ex-  
2 change shall:

3 (1) Consult with stakeholders, including but not limited to  
4 consumers, carriers, producers, providers and advocates for  
5 hard to reach populations; and

6 (2) Meet the following financial integrity requirements:

7 (A) Keep an accurate accounting of all activities, receipts  
8 and expenditures and annually submit to the secretary, the  
9 Governor, the commissioner and the Legislature a report  
10 concerning such accountings;

11 (B) Fully cooperate with any investigation conducted by  
12 the secretary pursuant to the secretary's authority under the  
13 Federal Act and allow the secretary, in coordination with the  
14 Inspector General of the United States Department of Health  
15 and Humans Services, to:

16 (i) Investigate the affairs of the exchange;

17 (ii) Examine the properties and records of the exchange;  
18 and

19 (iii) Require periodic reports in relation to the activities  
20 undertaken by the exchange; and

21 (C) In carrying out its activities under this article, not use  
22 any funds intended for the administrative and operational  
23 expenses of the exchange for staff retreats, promotional  
24 giveaways, excessive executive compensation or promotion  
25 of federal or state legislative and regulatory modifications.

26 (b) (1) The implementation of the provisions of this article,  
27 other than this subsection, section three of this article, and  
28 section five of this article, shall be contingent on a determi-  
29 nation by the board that sufficient financial resources exist  
30 or will exist in the fund, which determination shall be based  
31 on, at a minimum:

32 (A) Financial projections identifying that sufficient  
33 resources exist or will exist in the fund to implement the  
34 exchange; and

35 (B) A comparison of the projected resources available to  
36 support the exchange and the projected costs of activities  
37 required by this article.

38 (2) In the event any portion of the Federal Act or of any  
39 regulation or other guidance issued thereunder is legisla-  
40 tively or judicially invalidated and rendered of no effect in  
41 this state, the board shall immediately issue a bulletin  
42 setting forth its legal opinion as to the effect of such legisla-  
43 tive or judicial action on the legal status of the correspond-  
44 ing provisions of such act, regulation or guidance as set forth  
45 in this article or in rules promulgated hereunder; the board  
46 shall also issue recommendations to the Legislature for  
47 amendments to this article necessitated by such judicial or  
48 legislative action.

**§33-16G-5. Establishment of governing board of the exchange;  
reports; training.**

1 (a) The exchange shall operate subject to the supervision  
2 and control of a governing board. The powers conferred upon

3 the board by this article and the carrying out of its purposes  
4 and duties shall be considered to be essential governmental  
5 functions and for a public purpose. The Governor shall  
6 appoint a chairperson of the board from the membership set  
7 forth in subsection (b) of this section, with the advice and  
8 consent of the Senate.

9 (b) The board shall be composed of the following members:

10 (1) Four voting *ex officio* members: The Commissioner; the  
11 Commissioner of the West Virginia Bureau for Medical  
12 Services; the Director of the West Virginia Children's Health  
13 Insurance Program; and the Chair of the West Virginia  
14 Health Care Authority. *Ex officio* members may designate a  
15 representative to serve in his or her place;

16 (2) Four persons appointed by the Governor with advice  
17 and consent of the Senate, each to represent the interests of  
18 one of the following groups: Individual health care consum-  
19 ers; small employers; organized labor; and insurance produc-  
20 ers;

21 (3) One person to represent the interests of payors who is  
22 selected by majority vote of an advisory group comprising  
23 representatives of the ten carriers with the highest health  
24 insurance premium volume in this state in the preceding  
25 calendar year, ascertified by the commissioner. Beginning in  
26 2014, the advisory group shall be comprised only of repre-  
27 sentatives of those carriers that are offering qualified plans  
28 in the exchange regardless of premium volume: *Provided,*  
29 That the member selected pursuant to this paragraph may  
30 not be an employee of a carrier or an affiliate of a carrier  
31 eligible to select such member; and

32 (4) One person to represent the interests of health care  
33 providers selected by the majority vote of an advisory group  
34 comprised of a representative of each of the following: West  
35 Virginia Association of Free Clinics, West Virginia Hospital  
36 Association, West Virginia State Medical Association, West  
37 Virginia Primary Care Association, West Virginia Nurses

38 Association, West Virginia Society of Osteopathic Medicine,  
39 West Virginia Academy of Family Physicians, West Virginia  
40 Pharmacists Association, West Virginia Dental Association,  
41 West Virginia Behavioral Health Care Providers, West  
42 Virginia Chiropractic Society, West Virginia Optometric  
43 Association, West Virginia Podiatric Medical Association,  
44 West Virginia Physical Therapists Association, and a full-  
45 time health officer of a county or regional health department  
46 selected by all full-time health officers of all county or  
47 regional health departments.

48 (5) Selection of board members pursuant to paragraphs (3)  
49 and (4) of this subdivision shall be conducted in a manner  
50 and at such times designated by the chair of the board.

51 (6) Each member appointed pursuant to paragraph (2) of  
52 this section or selected pursuant to paragraph (3) or (4) of  
53 this subsection shall serve a term of four years and is eligible  
54 to be reappointed, except that the term of each of the four  
55 persons initially appointed pursuant to paragraph (2) of this  
56 section to represent the groups listed therein shall be as  
57 follows: Individual consumer, one year; small employers, two  
58 years; labor, three years; and producers, four years. Any  
59 appointed or selected member whose term has expired may  
60 continue to serve until either he or she has been reappointed  
61 or his or her successor has been duly appointed or selected.

62 (c) Board members may be removed by the Governor for  
63 cause.

64 (d) Members of the board are not entitled to compensation  
65 for services performed as members but are entitled to  
66 reimbursement for all reasonable and necessary expenses  
67 actually incurred in the performance of their duties.

68 (e) Seven members of the board constitute a quorum, and  
69 the affirmative vote of six members is necessary for any  
70 action taken by vote of the board. No vacancy in the mem-  
71 bership of the board impairs the rights of a quorum by such  
72 vote to exercise all the rights and perform all the duties of  
73 the board.



74 (f) The board may employ an executive director who has  
75 overall management responsibility for the exchange and such  
76 employees as may be necessary. The executive director and  
77 employees of the exchange shall receive a salary as provided  
78 by the board. The executive director and all employees of the  
79 board are exempt from the classified service and not subject  
80 to the procedures and protections provided by article two,  
81 chapter six-c of this code and article six, chapter twenty-  
82 nine of this code;

83 (g) The board may establish *ad hoc* or standing advisory  
84 committees of consumers and other stakeholder groups or  
85 interested parties to study particular policy issues and to  
86 advise the board.

87 (h) The board shall make an annual report to the Governor  
88 and also file it with the Joint Committee on Government and  
89 Finance. The report shall summarize the activities of the  
90 exchange in the preceding calendar year.

91 (i) Neither the board nor its employees are liable for any  
92 obligations of the exchange. No member of the board or  
93 employee of the exchange is liable and no cause of action of  
94 any nature may arise against them for any act or omission  
95 related to the performance of their powers and duties under  
96 this article unless the act or omission constitutes willful or  
97 wanton misconduct. The board may provide in its bylaws or  
98 rules for indemnification of, and legal representation for, its  
99 members and employees.

100 (j) Members of the board shall receive governmental ethics  
101 training within the first six months of being appointed.  
102 Additional ethics training is required for board members at  
103 least every two years thereafter.

**§33-16G-6. Funding; publication of costs.**

1 (a) On and after July 1, 2011, the board is authorized to  
2 assess fees on health carriers selling qualified dental plans or  
3 health benefit plans in this state, including health benefit

4 plans sold outside the exchange, and shall establish the  
5 amount of such fees and the manner of the remittance and  
6 collection of such fees in legislative rules. Fees shall be based  
7 on premium volume of the qualified dental plans or health  
8 benefit plans sold in this state and shall be for the purpose of  
9 operation of the exchange.

10 (b) The exchange shall publish the average costs of licens-  
11 ing, regulatory fees and any other payments required by the  
12 exchange, and the administrative costs of the exchange, on  
13 an Internet website to educate consumers on such costs. This  
14 information shall include information on moneys lost to  
15 waste, fraud and abuse.

#### **§33-16G-7. Rules.**

1 The board may promulgate emergency rules and propose  
2 legislative rules for adoption by the Legislature pursuant to  
3 the provisions of article three, chapter twenty-nine-a of this  
4 code to implement the provisions of this article. Emergency  
5 or legislative rules promulgated under this section may not  
6 conflict with or prevent the application of the federal act or  
7 regulations promulgated by the secretary under such act.

#### **§33-16G-8. Relation to other laws.**

1 Nothing in this article, and no action taken by the ex-  
2 change pursuant to this article, preempts or supersedes the  
3 authority of the commissioner to regulate the business of  
4 insurance within this state and, except as expressly provided  
5 to the contrary in this article, all health carriers offering  
6 qualified health plans in this state shall comply fully with all  
7 applicable health insurance laws of this state and orders  
8 issued by the commissioner.

#### **§33-16G-9. Special revenue account created.**

1 (a) There is hereby created a special revenue account in the  
2 State Treasury, designated the "West Virginia Health  
3 Benefits Exchange Fund", which shall be an interest-bearing

4 account and may be invested in the manner permitted by  
5 article six, chapter twelve of this code, with the interest  
6 income a proper credit to the fund, unless otherwise desig-  
7 nated in law. The fund shall be administered by the board  
8 and used to pay all proper costs incurred in implementing  
9 the provisions of this article. Moneys deposited into this  
10 account are available for expenditure as the board may  
11 direct in accordance with the provisions of this article.  
12 Expenditures shall be for the purposes set forth in this  
13 article, are authorized from collections and do not revert to  
14 the General Fund.

15 (b) The following shall be paid into this account:

16 (1) All funds from the federal government received and  
17 dedicated to or otherwise able to be used for the purposes of  
18 this article;

19 (2) All other payments, gifts, grants, bequests or income  
20 from any source;

21 (3) Fees on health carriers established by the board; and

22 (4) Appropriations from the Legislature.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

2011 APR -5 PM 3:10  
SECRETARY OF STATE  
STATE OF ARIZONA

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
Acting President of the Senate

*[Signature]*  
.....  
Speaker of the House of Delegates

The within *is approved* this the *5<sup>th</sup>*  
Day of *April*, 2011.

*[Signature]*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 23 2011

Time 3:45 pm