

COMMITTEE SUBSTITUTE

FOR

H. B. 3163

(BY DELEGATE PERRY)
[BY REQUEST OF THE INSURANCE COMMISSIONER]

(Originating in the Committee on the Judiciary)
[February 25, 2011]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-2-21a, relating to establishing a program to provide workers' compensation coverage of state government entities and their employees; defining participants and exceptions thereto; designating the insurance commissioner to manage workers' compensation risks of state entities; creating a purchasing exemption for the

program; authorizing commissioner to assess fees, surcharges and premiums; creating fund in state treasury; authorizing investment of funds; permitting the insurance commissioner to borrow funds from the insurance commissioner fund for the initial operation of the program; authorizing insurance commissioner to propose legislative rules and to adopt emergency rules; requiring reports to the Joint Committee on Government and Finance on the status of the program; and requiring consultation by the insurance commissioner with the State Board of Risk and Insurance Management.

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 §33-2-21a, to read as follows:

§33-2-21a. State agency workers' compensation programs.

- 1 (a) The intent of this section is to provide a means of
- 2 managing workers' compensation coverage for persons
- 3 directly employed by the State of West Virginia. For the
- 4 purposes of this section:

5 (1) “Discretionary participant” means the Parkways
6 Authority, offices of the State Auditor, the State Treasurer,
7 the Secretary of State, the Attorney General, the Department
8 of Agriculture, the State Senate and House of Delegates or
9 their related entities, the Supreme Court of Appeals, the State
10 Police and any other spending unit of the state that is
11 required by section twelve, article two, chapter eleven-b of
12 this code to provide a detailed expenditure schedule to the
13 Secretary of Revenue in his or her capacity as Director of the
14 Budget: *Provided*, That the term “discretionary participant”
15 does not include any executive state entity other than the
16 State Police and the Parkways Authority, any county board
17 of education, any other county entity or its instrumentality or
18 any municipality or its instrumentality.

19 (2) “Executive state entity” means the Governor’s Office
20 and its affiliated entities, Bureau of Senior Services, or any
21 state department, division, fund, office, position, system,
22 survey or other entity of state government, however
23 designated, transferred to and incorporated in one of the

24 executive departments created in section two, article one,
25 chapter five-f of this code, except the State Police, and that
26 is required by section twelve, article two, chapter eleven-b of
27 this code to provide a detailed expenditure schedule to the
28 Secretary of Revenue in his or her capacity as Director of the
29 Budget.

30 (b) Notwithstanding any provision of this code to the
31 contrary, the commissioner has sole responsibility for
32 managing the workers' compensation risks of all executive
33 state entities and for supervising and controlling the workers'
34 compensation programs for such entities: *Provided, That any*
35 discretionary participant may participate in the program
36 upon application to the commissioner under the same terms
37 and conditions as are applicable to executive state entities:
38 *Provided further, That a discretionary participant is, in*
39 accordance with rules governing the program, permitted to
40 withdraw from continued participation in the program.

41 (c) The commissioner may assess such fees or surcharges
42 on participants in the program necessary to manage the

43 workers' compensation risks of those participants. All
44 premiums, fees and surcharges shall be established in
45 accordance with generally acceptable actuarial standards
46 applicable to workers compensation coverage as to each
47 participant and as to all participants in the aggregate. The
48 commissioner shall establish criteria for assessments of
49 premiums, fees and surcharges designed to provide the most
50 cost efficient coverage for all participants.

51 (d) The provisions of article three, chapter five-a of this
52 code relating to the Purchasing Division of the Department
53 of Administration do not apply to any contract entered into
54 by the commissioner in furtherance of the requirements of
55 this section: *Provided*, That those contracts shall be awarded
56 on a competitive basis.

57 (e) (1) There is hereby established the "State Entities
58 Workers' Compensation Program Fund." All premiums,
59 surcharges, assessments, deposits or any other moneys or
60 funds deposited or otherwise designated or accruing to the
61 fund as well as all earnings payable to it, shall be deposited

62 in the State Treasury to the credit of the fund. Expenditures
63 from the fund shall be for the purposes set forth in this
64 section, are authorized from collections, and shall not revert
65 to the General Fund. The fund shall be a separate and
66 distinct fund upon the books and records of the Auditor and
67 Treasurer, and disbursements therefrom shall be made upon
68 requisitions signed by the Insurance Commissioner.

69 (2) Any premiums, assessments or deposits or any other
70 moneys or funds received for the purposes of this section
71 shall be invested by the State Treasurer at the request of the
72 commissioner.

73 (3) The Insurance Commissioner may borrow funds as is
74 determined necessary from the Insurance Commission Fund,
75 created in section thirteen-b, article three, chapter thirty-three
76 of this code, for the initial operations of the workers'
77 compensation program for state entities: *Provided*, That any
78 borrowed funds shall be deposited to the credit of the State
79 Entities Workers' Compensation Program Fund: *Provided*,
80 however, That these borrowed funds shall be repaid, without

81 interest, and redeposited to the credit of the Insurance
82 Commission Fund as determined by the Insurance
83 Commissioner.

84 (f) The commissioner may promulgate emergency rules
85 and shall propose for legislative approval legislative rules, in
86 accordance with the provisions of article three, chapter
87 twenty-nine-a of this code, as are necessary to provide for
88 implementation and enforcement of the provisions of this
89 section.

90 (g) The commissioner shall submit reports on the status
91 and progress of the program established in this section to the
92 joint committee on government and finance upon request,
93 together with any other specific information on the program
94 requested by the committee.

95 (h) The commissioner shall consult with the State Board
96 of Risk and Insurance Management to solicit any applicable
97 experience and expertise in establishing and managing a
98 program to provide insurance coverage to state agencies.