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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIFTH EXTRAORDINARY SESSION, 2005



# ENROLLED

## House Bill No. 501

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]



Passed November 14, 2005

In Effect from Passage

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**E N R O L L E D**

## **H. B. 501**

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed November 14, 2005; in effect from passage.]

AN ACT to amend and reenact §23-2C-1, §23-2C-2, §23-2C-4, §23-2C-7, §23-2C-8, §23-2C-15, §23-2C-16 and §23-2C-20 of the Code of West Virginia, 1931, as amended; to further amend said code by adding thereto a new section, designated §23-2C-3a; and to amend and reenact §23-4B-1, §23-4B-2, §23-4B-3, §23-4B-4, §23-4B-5, §23-4B-7 and §23-4B-9 of said code, all relating to the transition of the workers' compensation commission to the West Virginia Employers' Mutual Insurance Company generally.

*Be it enacted by the Legislature of West Virginia:*

That §23-2C-1, §23-2C-2, §23-2C-4, §23-2C-7, §23-2C-8, §23-2C-15, §23-2C-16 and §23-2C-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-2C-3a; and that §23-4B-1, §23-4B-2, §23-4B-3, §23-4B-4, §23-4B-5, §23-4B-7 and §23-4B-9 of said code be amended and reenacted, all to read as follows:

**ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.**

**§23-2C-1. Findings and purpose.**

1 (a) The Legislature finds that:

2 (1) There is a long-term actuarial funding crisis in the state-  
3 run monopolistic workers' compensation system;

4 (2) Similar short-term and long-term crises have been  
5 ongoing during the past two decades;

6 (3) During the current crisis, employers in West Virginia  
7 find it increasingly difficult to afford the rates charged by the  
8 Workers' Compensation Commission for workers' compensa-  
9 tion coverage and that paying said rates adversely impacts  
10 employers' ability to compete in a global economic environ-  
11 ment;

12 (4) The cost of obtaining workers' compensation coverage  
13 from the state system may result in many employers leaving the  
14 state;

15 (5) Employers' access to competitive workers' compensa-  
16 tion rates and the resulting economic development benefit is of  
17 utmost importance to the citizens of West Virginia;

18 (6) A mechanism is needed to provide an enduring solution  
19 to this recurring workers' compensation crisis;

20 (7) An employers' mutual insurance company or a similar  
21 entity has proven to be a successful mechanism in other states  
22 for helping employers secure insurance and for stabilizing the  
23 insurance market;

24 (8) There is a substantial public interest in creating a  
25 method to provide a stable workers' compensation insurance  
26 market in this state;

27 (9) The state-run workers' compensation program is a  
28 substantial actual and potential liability to the state;

29 (10) There is substantial public benefit in transferring  
30 certain actual and potential future liability of the state to the  
31 private sector and creating a stable self-sufficient entity which  
32 will be a potential source of workers' compensation coverage  
33 for employers in this state;

34 (11) A stable, financially viable insurer in the private sector  
35 will aid in providing a continuing source of insurance funds to  
36 compensate injured workers; and

37 (12) Because the public will greatly benefit from the  
38 formation of an employers' mutual insurance company, state  
39 efforts to encourage and support the formation of such an  
40 entity, including providing funding for the entity's initial  
41 capital, is in the clear public interest.

42 (b) The purpose of this article is to create a mechanism for  
43 the formation of an employers' mutual insurance company that  
44 will provide:

45 (1) A means for employers to obtain workers' compensa-  
46 tion insurance that is reasonably available and affordable; and

47 (2) Compensation to employees of mutual policyholders  
48 who suffer work place injuries as defined in this chapter.

49 (c) The further purpose of this article is to transfer New  
50 Fund assets relating to the workers' compensation insurance  
51 business to the company, including a reasonable level of  
52 policyholder surplus, and for the company to assume the New  
53 Fund liabilities related to the transferred assets. It is the intent  
54 of this article to provide for the initial capitalization of the  
55 company to comply with and to meet the requirements of  
56 section 351 and related sections of the Internal Revenue Code.

**§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, article  
6 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 the  
11 employers' mutual insurance company created pursuant to the  
12 terms of this article.

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

17 (f) "Industrial insurance" means insurance which provides  
18 all compensation and benefits required by this chapter.

19 (g) "Insurer" includes:

20 (1) A self-insured employer; and

21 (2) A private carrier.

22 (h) "Industrial Council" means the advisory group estab-  
23 lished in section five of this article.

24 (I) "Mutualization Transition Fund" shall be a fund over  
25 which the State Treasurer is custodian. Moneys transferred or  
26 otherwise payable to the Mutualization Transition Fund shall be

27 deposited in the State Treasury to the credit of the  
28 Mutualization Transition Fund. Disbursements shall be made  
29 from the Mutualization Transition Fund upon requisitions  
30 signed by the executive director, and, upon termination of the  
31 commission, the Insurance Commissioner, and shall be reason-  
32 ably related to the legal, operational, consultative and human  
33 resource-related expenses associated with the establishment of  
34 the company and the transferring of personnel from the  
35 commission to the company.

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

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

54 (l) "Old Fund" shall mean a fund held by the State Trea-  
55 surer's office consisting of those funds transferred to it from the  
56 Workers' Compensation Fund or other sources and those funds  
57 due and owing the Workers' Compensation Fund as of the  
58 thirtieth day of June, two thousand five, that are thereafter  
59 collected. The Old Fund and assets therein shall remain

60 property of the state and shall not novate or otherwise transfer  
61 to the company.

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

77 (n) "Private carrier" means any insurer or the legal repre-  
78 sentative of an insurer authorized by the Insurance Commis-  
79 sioner to provide workers' compensation insurance pursuant to  
80 this chapter and which maintains an office in the state. The term  
81 does not include a self-insured employer or private employers  
82 but shall include any successor to the commission.

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

90 (p) "Self-Insured Employer Guaranty Risk Pool" shall be  
91 a fund held by the State Treasurer's office consisting of those

92 funds transferred to it from the guaranty pool created pursuant  
93 to 85 CSR §19 (2004) and any future funds collected through  
94 continued administration of that exempt legislative rule as  
95 administered by the Insurance Commissioner. Disbursements  
96 shall be made from the Self-Insured Employer Guaranty Risk  
97 Pool upon requisitions signed by the Insurance Commissioner.  
98 The obligations of the fund shall be as provided in 85 CSR §19  
99 (2004).

100 (q) “Self-Insured Employer Security Risk Pool” shall be a  
101 fund held by the state’s Treasurer consisting of those funds paid  
102 into it through the Insurance Commissioner’s administration of  
103 85 CSR §19 (2004). Disbursement from said fund shall be made  
104 from the Self-Insured Employer Security Risk Pool upon  
105 requisitions signed by the Insurance Commissioner. The  
106 obligations of the fund shall be as provided in 85 CSR §19:  
107 *Provided*, That said liabilities shall be limited to those self-  
108 insured employers who default on their claims obligations after  
109 the termination of the commission.

110 (r) “Private Carrier Guaranty Fund” shall be a fund held by  
111 the State Treasurer’s office consisting of funds deposited  
112 pursuant to this article. Disbursements shall be made from the  
113 Private Carrier Guaranty Fund upon requisitions signed by the  
114 Insurance Commissioner. The obligations of the fund shall be  
115 as provided in this article.

116 (s) “Assigned Risk Fund” shall be a fund held by the State  
117 Treasurer’s office consisting of funds deposited pursuant to this  
118 article. Disbursements shall be made from the Assigned Risk  
119 Fund upon requisitions signed by the Insurance Commissioner.  
120 The obligations of the fund shall be as provided in this article.

121 (t) “Comprehensive financial plan” shall mean the plan  
122 compiled by the director for acceptance by the Insurance  
123 Commissioner identifying and forecasting cash flows, funding



124 sources, debt terms and structures and scheduled amortization  
125 and permanent resolution of all Old Fund liabilities. The  
126 comprehensive financial plan shall provide for the retirement of  
127 the revenue bonds authorized by article two-d of this chapter  
128 and all realized and potential claims against the Old Fund shall  
129 be fully reserved. The comprehensive financial plan may  
130 include any other information the Insurance Commissioner may  
131 require as a basis for managing the post-transition fiscal  
132 soundness of the Old Fund.

**§23-2C-3a. Employers' mutual insurance company - additional provisions enacted in November 2005.**

1 (a) Notwithstanding any other provisions of this article to  
2 the contrary, the employers' mutual insurance company:

3 (1) May not be dissolved.

4 (2) May not transact such other kinds of property and  
5 casualty insurance for which the company is otherwise qualified  
6 under the provisions of this code prior to the first day of  
7 January, two thousand nine.

8 (b) As soon as practical following the effective date of this  
9 section, the company established pursuant to the provisions of  
10 this article shall, through a vote of a majority of its provisional  
11 board, file its amended articles of incorporation and amended  
12 bylaws with the Insurance Commissioner and apply for a  
13 license with the Insurance Commissioner to transact insurance  
14 in this state. Notwithstanding any other provision of this code,  
15 the Insurance Commissioner shall act on the documents within  
16 fifteen days of the filing by the company.

17 (c) Notwithstanding any provision of subsection (g), section  
18 three of this article to the contrary, in the event the Governor  
19 certifies to the Legislature that revenue bonds issued pursuant  
20 to article two-d of this chapter have been retired and that the

21 unfunded liability of the Old Fund has been paid or has been  
22 provided for in its entirety, whichever occurs last, then:

23 (1) The premiums surcharge imposed by subdivision (2),  
24 subsection (f), section three of this article shall not sunset and  
25 shall continue to be remitted in accordance with the provisions  
26 of said subsection; and

27 (2) The premiums surcharge imposed by subdivision (3),  
28 subsection (f), section three of this article shall sunset and not  
29 be collectible with respect to workers' compensation insurance  
30 premiums paid when the policy is renewed on or after the first  
31 day of the month following the month in which the Governor  
32 makes the certification.

33 (d) Except as may otherwise be provided in this subsection,  
34 all provisions of section three of this article shall remain in full  
35 force and effect.

#### **§23-2C-4. Governance and organization.**

1 (a) (1) The commission shall implement the initial forma-  
2 tion and organization of the company as provided by this  
3 article.

4 (2) From the inception of the company, until the first day of  
5 January, two thousand six, the company shall be governed by  
6 a provisional board of directors consisting of the three persons  
7 on the executive committee of the workers' compensation board  
8 of managers and four members of the Legislature. Two mem-  
9 bers of the West Virginia Senate and two members of the West  
10 Virginia House of Delegates shall serve as advisory nonvoting  
11 members of the board. The Governor shall appoint the legisla-  
12 tive members to the board. No more than three of the legislative  
13 members shall be of the same political party. The provisional  
14 board shall have the authority to function as necessary to  
15 establish the company and cause it to become operational,

16 including the right to contract on behalf of the company. Each  
17 voting board member shall receive compensation of not more  
18 than three hundred fifty dollars per day and actual and neces-  
19 sary expenses for each day during which he or she is required  
20 to and does attend a meeting of the board.

21 (3) Except as limited by this section and applicable insur-  
22 ance rules and statutes, the company may: (1) On its own; (2)  
23 through the formation or acquisition of subsidiaries; or (3)  
24 through a joint enterprise, offer:

25 (A) Workers' compensation insurance in a state other than  
26 West Virginia to the extent it also provides workers' compensa-  
27 tion or occupational disease insurance coverage to the employer  
28 pursuant to this chapter;

29 (B) Other workers' compensation products and services and  
30 related products and services in West Virginia or other states;  
31 and

32 (C) Other property and casualty insurance in West Virginia  
33 and other states on or after the first day of January, two  
34 thousand nine.

35 (b) Any election process for the board of directors devel-  
36 oped, implemented and overseen by the company's provisional  
37 board prior to the effective date of the amendments to this  
38 section enacted during the fifth extraordinary session of the  
39 Legislature in two thousand five is nullified and the designation  
40 of the company's initial board of directors shall be governed by  
41 the following: Effective the first day of January, two thousand  
42 six, the company shall be governed by a board of directors  
43 consisting of seven directors, as follows:

44 (1) Three owners or officers of an entity that has purchased  
45 or will immediately upon termination of the commission  
46 purchase and maintain an active workers' compensation

47 insurance policy from the company. At least one shall be a  
48 certified public accountant with financial management or  
49 pension or insurance audit expertise and at least one shall be an  
50 attorney with financial management experience. These three  
51 directors shall be appointed by the Governor.

52 (2) Two directors who have substantial experience as an  
53 officer or employee of a company in the insurance industry, one  
54 of whom is from a company with less than fifty employees.  
55 These two directors shall be appointed by the Governor.

56 (3) One director with general knowledge and experience in  
57 business management who is an officer and employee of the  
58 company and is responsible for the daily management of the  
59 company.

60 (4) The chief executive officer of the company.

61 (c) The initial board of directors appointed by the Governor  
62 shall serve from the termination of the commission through the  
63 thirty-first day of December, two thousand eight, and may be  
64 not removed from that position except for cause.

65 (d) Any board vacancy that occurs from the termination of  
66 the commission through the thirty-first day of December, two  
67 thousand eight, shall be filled through appointment by the  
68 Governor for the unexpired term.

69 (e) Upon expiration of the initial terms or upon a vacancy  
70 of the board following the thirty-first day of December, two  
71 thousand eight, the directors of the company are to be chosen in  
72 accordance with the articles of incorporation and bylaws of the  
73 company, as amended, which shall provide for the policyhold-  
74 ers to nominate and elect future directors. Furthermore, owners,  
75 directors or employees of employers otherwise licensed to write  
76 workers' compensation insurance in this state or licensed or  
77 otherwise authorized to act as a third-party administrator shall

78 not be eligible to be nominated, appointed, elected or serve on  
79 the company's board of directors.

80 (f) The Executive Director shall prepare and file amended  
81 articles of incorporation and bylaws in accordance with the  
82 provisions of this article and the provisions of chapters thirty-  
83 one and thirty-three of this code.

84 (g) It is the intent of this legislation to create an entity  
85 exempt from federal taxation, as provided for in Section  
86 501(c)(27)(B) of the Internal Revenue Code, for as long as the  
87 company meets the federal qualification requirements of  
88 Section 501(c)(27)(B) of the Internal Revenue Code.

**§23-2C-7. Custody, investment and disbursement of funds.**

1 (a) The State Treasurer shall be the custodian of the  
2 workers' compensation Old Fund, workers' compensation  
3 Uninsured Employer Fund, the Self-Insured Employer Guaranty  
4 Risk Pool, the Self-Insured Employer Security Risk Pool, the  
5 Private Carrier Guaranty Fund and the Assigned Risk Fund and  
6 moneys payable to each of these funds shall be deposited in the  
7 State Treasury to the credit of the funds. Each fund shall be a  
8 separate and distinct fund upon the books and records of the  
9 Auditor and Treasurer. Disbursements from these funds shall be  
10 made upon requisitions signed by the executive director and,  
11 effective upon termination of the commission, the Insurance  
12 Commissioner. The workers' compensation Old Fund, the  
13 workers' compensation Uninsured Employer Fund, the Self-  
14 Insured Employer Guaranty Risk Pool, Self-Insured Employer  
15 Security Risk Pool, the Private Carrier Guaranty Fund and the  
16 Assigned Risk Fund are participant plans as defined in section  
17 two, article six, chapter twelve of this code and are subject to  
18 the provisions of section nine-a of said article. The funds may  
19 be invested by the Investment Management Board in accor-  
20 dance with said article.

21 (b) If the Governor issues the proclamation set forth in this  
22 article, then, effective upon termination of the commission, all  
23 remaining assets and funds contained in the Workers' Compensa-  
24 tion Fund which are payable to the New Fund shall be so  
25 disbursed and paid to the company by communication of the  
26 executive director to the State Treasurer or other appropriate  
27 state official prior to the termination of the commission.

**§23-2C-8. West Virginia Uninsured Employer Fund.**

1 (a) The West Virginia Uninsured Employer Fund shall be  
2 governed by the following:

3 (1) All money and securities in the fund must be held by the  
4 State Treasurer as custodian thereof to be used solely as  
5 provided in this article.

6 (2) The State Treasurer may disburse money from the fund  
7 only upon written requisition of the Insurance Commissioner.

8 (3) The Insurance Commissioner shall assess each private  
9 carrier and all self-insured employers an amount to be deposited  
10 in the fund. The assessment may be collected by each private  
11 carrier from its policy holders in the form of a policy surcharge.  
12 To establish the amount of the assessment, the Insurance  
13 Commissioner shall determine the amount of money necessary  
14 to maintain an appropriate balance in the fund for each fiscal  
15 year and shall allocate a portion of that amount to be payable by  
16 private carriers, a portion to be payable by self-insured employ-  
17 ers and a portion to be paid by any other appropriate group.  
18 After allocating the amounts payable, the Insurance Commis-  
19 sioner shall apply an assessment rate to:

20 (A) Private carriers that reflects the relative hazard of the  
21 employments covered by the private carriers, results in an  
22 equitable distribution of costs among the private carriers and is  
23 based upon expected annual premiums to be received;

24 (B) Self-insured employers that results in an equitable  
25 distribution of costs among the self-insured employers and is  
26 based upon expected annual expenditures for claims; and

27 (C) Any other categories of payees that results in an  
28 equitable distribution of costs among them and is based upon  
29 expected annual expenditures for claims or premium to be  
30 received.

31 (4) The workers' compensation board of managers may  
32 adopt rules for the establishment and administration of the  
33 assessment methodologies, rates, payments and any penalties  
34 that the workers' compensation board of managers determines  
35 are necessary to carry out the provisions of this section.

36 (b) Payments from the fund shall be governed by the  
37 following:

38 (1) Except as otherwise provided in this subsection, an  
39 injured worker of any employer required to be covered under  
40 this chapter who has failed to obtain coverage may receive  
41 compensation from the uninsured employers' fund if:

42 (A) He or she meets all jurisdictional and entitlement  
43 provisions of this chapter;

44 (B) He or she files a claim with the Insurance Commis-  
45 sioner; and

46 (C) He or she makes an irrevocable assignment to the  
47 Insurance Commissioner a right to be subrogated to the rights  
48 of the injured employee.

49 (2) If the Insurance Commissioner receives a claim, it shall  
50 immediately notify the employer of the claim. For the purposes  
51 of this section, the employer has the burden of proving that it  
52 provided mandatory workers' compensation insurance coverage

53 for the employee or that it was not required to maintain  
54 workers' compensation insurance for the employee. If the  
55 employer meets this burden, benefits shall not be paid from the  
56 fund.

57 (3) Any employer who has failed to provide mandatory  
58 coverage required by the provisions of this chapter is liable for  
59 all payments made on its behalf, including any benefits,  
60 administrative costs and attorney's fees paid from the fund or  
61 incurred by the Insurance Commissioner.

62 (4) The Insurance Commissioner:

63 (A) May recover from the employer the payments made by  
64 it, any accrued interest and attorney fees and costs by bringing  
65 a civil action in a court of competent jurisdiction.

66 (B) May enter into a contract with any person, including the  
67 third-party administrator of the Uninsured Employer Fund, to  
68 assist in the collection of any liability of an uninsured em-  
69 ployer.

70 (C) In lieu of a civil action, may enter into an agreement or  
71 settlement regarding the collection of any liability of an  
72 uninsured employer.

73 (5) The Insurance Commissioner shall:

74 (A) Determine whether the employer was insured within  
75 five days after receiving notice of the claim from the employee.

76 (B) Assign the claim to the third-party administrator of the  
77 fund for administration and, if appropriate, payment of compen-  
78 sation.

79 (6) Upon determining whether the claim is accepted or  
80 denied, the third-party administrator shall notify the injured  
81 employee and the named employer of its determination.



82 (7) Any party aggrieved by a determination made by the  
83 Insurance Commissioner or the third-party administrator  
84 regarding the claims decisions made pursuant to this section  
85 may appeal that determination by filing a protest with the office  
86 of judges as set forth in article five of this chapter.

87 (8) An uninsured employer is liable for the interest on any  
88 amount paid on his or her claims from the fund. The interest  
89 must be calculated at a rate set in accordance with the provi-  
90 sions of section thirteen, article two of this chapter, com-  
91 pounded monthly, from the date the claim is paid from the  
92 account until payment is received by the Insurance Commis-  
93 sioner or third-party administrator from the employer.

94 (9) Attorney's fees recoverable by the Insurance Commis-  
95 sioner or third-party administrator pursuant to this section must  
96 be paid at the usual and customary rate for that attorney.

97 (10) In addition to any other liabilities provided in this  
98 section, the Insurance Commissioner or the third-party adminis-  
99 trator may impose an administrative fine of not more than ten  
100 thousand dollars against an employer if the employer fails to  
101 provide mandatory coverage required by this chapter. All fines  
102 and other moneys collected pursuant to this section shall be  
103 deposited into the Uninsured Employer Fund.

104 (c) Employees of self-insured employers who are injured  
105 while employed by a self-insured employer are ineligible for  
106 benefits from the West Virginia Uninsured Employer Fund.

**§23-2C-15. Mandatory coverage; changing of coverage.**

1 (a) Effective upon termination of the commission, all  
2 subscriber policies with the commission shall novate to the  
3 company and all employers otherwise shall purchase workers'  
4 compensation insurance from the company unless permitted to  
5 self-insure their obligations. The company shall assume

6 responsibility for all New Fund obligations of the subscriber  
7 policies which novate to the company or which are issued  
8 thereafter. Each subscriber whose policy novates to the com-  
9 pany shall also have its advanced deposit credited to its account  
10 with the company. Employers purchasing workers' compensa-  
11 tion insurance from the company shall have the right to  
12 designate a representative or agent to act on its behalf in any  
13 and all matters relevant to coverage and claims as administered  
14 by the company.

15 (b) Effective the first day of July, two thousand eight, an  
16 employer may elect to: (1) Continue to purchase workers'  
17 compensation insurance from the company; (2) purchase  
18 workers' compensation insurance from another private carrier  
19 licensed and otherwise authorized to transact workers' compen-  
20 sation insurance in this state; or (3) self-insure its obligations if  
21 it satisfies all requirements of this code to so self-insure and is  
22 permitted to do so: *Provided*, That all state and local govern-  
23 mental bodies, including, but not limited to, all counties and  
24 municipalities and their subdivisions and including all boards,  
25 colleges, universities and schools, shall continue to purchase  
26 workers' compensation insurance from the company through  
27 the thirtieth day of June, two thousand twelve. The company  
28 and other private carriers shall be permitted to sell workers'  
29 compensation insurance through licensed agents in the state. To  
30 the extent that a private carrier markets workers' compensation  
31 insurance through a licensed agent, it shall be subject to all  
32 applicable provisions of chapter thirty-three of this code. All  
33 employers' must immediately notify the Insurance Commis-  
34 sioner of its private carrier and any change thereto.

35 (c) An employer may elect to change its private insurer  
36 carrier on or after the first day of July, two thousand eight, if  
37 the employer has:

38 (1) Given at least thirty days' notice to the Insurance  
39 Commissioner of the change of insurer; and

40 (2) Furnished evidence satisfactory to the Insurance  
41 Commissioner that the payment of compensation has otherwise  
42 been secured.

43 (d) Each private carrier and employer shall notify the  
44 Insurance Commissioner if an employer has changed his or her  
45 insurer or has allowed his or her insurance to lapse within  
46 twenty- four hours or by the end of the next working day,  
47 whichever is later, after the insurer has notice of the change or  
48 lapse. Every employer shall post a notice upon its premises in  
49 a conspicuous place identifying its industrial insurer. The notice  
50 must include the insurer's name, business address and tele-  
51 phone number and the name, business address and telephone  
52 number of its nearest adjuster in this state. The employer shall  
53 at all times maintain the notice provided for the information of  
54 his or her employees. Release of employer policy information  
55 and status by the industrial council and the Insurance Commis-  
56 sioner shall be governed by section four, article one of this  
57 chapter. The Insurance Commissioner shall collect and maintain  
58 information related to officers, directors and ten percent or  
59 more owners of each carrier's policy holders. The private  
60 carrier shall provide said information to the Insurance Commis-  
61 sioner.

62 (e) Any rule promulgated by the workers' compensation  
63 board of managers empowering agencies of this state to revoke  
64 or refuse to grant, issue or renew any contract, license, permit,  
65 certificate or other authority to conduct a trade, profession or  
66 business to or with any employer whose account is in default  
67 with the commission shall be fully enforceable by the Insurance  
68 Commissioner against the employer in policy default with a  
69 private carrier.

70 (f) Effective the first day of January, two thousand nine, the  
71 company may decline to offer coverage to any applicant.  
72 Effective the first day of January, two thousand nine, the  
73 company and private carriers may cancel a policy or decline to  
74 renew a policy upon the issuance of sixty days' written advance  
75 notice to the policyholder: *Provided*, That cancellation of the  
76 policy by the carrier for failure of consideration to be paid by  
77 the policyholder is effective after fifteen days advance written  
78 notice of cancellation to the policyholder.

**§23-2C-16. Administration of Old Fund, Uninsured Employer  
Fund, Self-Insured Employer Guaranty Risk Pool,  
Self-Insured Employer Security Risk Pool and  
Private Carrier Guaranty Fund.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, the company shall be the initial third-party administra-  
3 tor of the Old Fund, Uninsured Employer Fund, Self-Insured  
4 Employer Guaranty Risk Pool, Self-Insured Employer Security  
5 Risk Pool and Private Carrier Guaranty Fund from the termina-  
6 tion of the commission and thereafter for a term of at least six  
7 months but not more than three years pursuant to an agreement  
8 to be entered into between the Insurance Commissioner and the  
9 company prior to the termination of the commission. The  
10 company shall be paid a reasonable fee for services provided.  
11 The company's administrative duties may include, but not be  
12 limited to, receipt of all claims, processing said claims, provid-  
13 ing for the payment of said claims through the State Treasurer's  
14 office or other applicable state agency and ensuring, through the  
15 selection and assignment of counsel, that claims decisions are  
16 properly defended. The administration of said funds thereafter  
17 shall be subject to the procedures set forth in article three,  
18 chapter five-a of this code.

19 (b) The Insurance Commissioner shall review claims  
20 determined to be payable from said funds and may contest the

21 determination pursuant to the provisions of article five of this  
22 chapter.

23 (c) The Insurance Commissioner may conduct or cause to  
24 be conducted an annual audit to be performed on said funds.

25 (d) The Insurance Commissioner may contract or employ  
26 counsel to perform legal services related solely to the collection  
27 of moneys due the Old Fund, including the collection of  
28 moneys due the Old Fund and enforcement of repayment  
29 agreements entered into for the collection of moneys due on or  
30 before the thirtieth day of June, two thousand five, in any  
31 administrative proceeding and in any state or federal court.

#### **§23-2C-20. Claims administration issues.**

1 (a) A self-insured employer shall continue to comply with  
2 rules promulgated by the board of managers governing the self-  
3 administration of its claims and the successor to the commis-  
4 sion shall also comply with the rules promulgated by the board  
5 of managers governing the self-administration of claims.

6 (b) The successor to the commission, any other private  
7 carrier and any employer that self-insures its risk and self-  
8 administers its claims shall exercise all authority and responsi-  
9 bility granted to the commission in this chapter and provide  
10 notices of action taken to effect the purposes of this chapter to  
11 provide benefits to persons who have suffered injuries or  
12 diseases covered by this chapter. The successor to the commis-  
13 sion, private carriers and self-insured employers shall at all  
14 times be bound and shall comply fully with all of the provisions  
15 of this chapter. Furthermore, all of the provisions contained in  
16 article four of this chapter pertaining to disability and death  
17 benefits are binding on and shall be strictly adhered to by the  
18 successor to the commission, private carriers and the self-  
19 insured employer in their administration of claims presented by  
20 employees of the self-insured employer.

21 (c) Upon termination of the commission, the Occupational  
22 Pneumoconiosis Board shall be transferred to the Insurance  
23 Commissioner and shall be administered by the Insurance  
24 Commissioner. The company and other private carriers shall  
25 have all authority and responsibility granted to the self-insured  
26 employers in the administration and processing of occupational  
27 pneumoconiosis claims.

28 (d) Upon termination of the commission, all claims  
29 allocation responsibilities shall transfer from the commission to  
30 the Insurance Commissioner.

31 (e) Upon termination of the commission, the third-party  
32 administrator of the Old Fund shall have all administrative and  
33 adjudicatory authority vested in the commission in administer-  
34 ing old law liabilities and otherwise processing and deciding  
35 old law claims.

#### **ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.**

##### **§23-4B-1. Purpose.**

1 The purpose of this article is to establish a fund to provide  
2 benefits to coal miners who are totally disabled by pneumoconi-  
3 osis and to eligible dependents of coal miners whose deaths  
4 were due to pneumoconiosis or who were totally disabled from  
5 pneumoconiosis at time of their deaths. The further purpose of  
6 this article is to provide a readily available insurer of liability  
7 created by Title IV of the federal Coal Mine Health and Safety  
8 Act of 1969, as amended, for claims incurred under said Act,  
9 including all claims where the date of last exposure is on or  
10 before the thirty-first day of December, two thousand five,  
11 without regard to the date the claim is filed.

##### **§23-4B-2. Coal-Workers' Pneumoconiosis Fund established.**

1 For the relief of persons who are entitled to receive benefits  
2 by virtue of Title IV of the federal Coal Mine Health and Safety

3 Act of 1969, as amended, for claims incurred under said Act,  
4 including all claims where the date of last exposure is on or  
5 before the thirty-first day of December, two thousand five,  
6 without regard to the date the claim is filed, there is continued  
7 a fund to be known as the Coal-Workers' Pneumoconiosis  
8 Fund, which fund shall be separate from the Workers' Compensa-  
9 tion Fund. The Coal-Workers' Pneumoconiosis Fund shall  
10 consist of premiums and other funds paid to the fund by  
11 employers, subject to the provisions of Title IV of the federal  
12 Coal Mine Health and Safety Act of 1969, as amended, who  
13 shall elect to subscribe to the fund to ensure the payment of  
14 benefits required by the Act for claims incurred under said Act,  
15 including all claims where the date of last exposure is on or  
16 before the thirty-first day of December, two thousand five,  
17 without regard to the date the claim is filed.

18 The State Treasurer shall be the custodian of the Coal-  
19 Workers' Pneumoconiosis Fund and all premiums, deposits or  
20 other moneys paid to the fund shall be deposited in the State  
21 Treasury to the credit of the Coal-Workers' Pneumoconiosis  
22 Fund. Disbursements from the fund shall be made upon  
23 requisition signed by the Executive Director of the Workers'  
24 Compensation Commission to those persons entitled to partici-  
25 pate in the fund: *Provided*, That effective upon the termination  
26 of the Workers' Compensation Commission, disbursement from  
27 the Coal-Workers' Pneumoconiosis Fund shall be made upon  
28 requisitions signed by the Insurance Commissioner. The  
29 Insurance Commissioner shall collect any unpaid premium and  
30 deposit the same in said fund. The West Virginia Investment  
31 Management Board may invest any surplus, reserve or other  
32 moneys belonging to the Coal-Workers' Pneumoconiosis Fund  
33 in accordance with article six, chapter twelve of this code.

**§23-4B-3. To whom benefits paid.**

1 Only those classes of persons who are entitled to benefits  
2 under Title IV of the federal Coal Mine Health and Safety Act

3 of 1969, as amended, for claims incurred under said Act,  
4 including all claims where the date of last exposure is on or  
5 before the thirty-first day of December, two thousand five,  
6 without regard to the date the claim is filed, are eligible to  
7 participate in the Coal-Workers' Pneumoconiosis Fund.

**§23-4B-4. Who may subscribe.**

1 Only those employers who are subject to the provisions of  
2 Title IV of the federal Coal Mine Health and Safety Act of  
3 1969, as amended, may elect to subscribe to the Coal-Workers'  
4 Pneumoconiosis Fund to insure the liability imposed upon such  
5 employers under the provisions of Title IV of the Act. Coverage  
6 by the Coal-Workers' Pneumoconiosis Fund will be provided  
7 only for claims incurred under the Act, including all claims  
8 where the date of last exposure is on or before the thirty-first  
9 day of December, two thousand five, without regard to the date  
10 the claim is filed.

**§23-4B-5. Payment of benefits.**

1 Upon receipt of an order of compensation issued pursuant  
2 to a claim for benefits filed under the provisions of Title IV of  
3 the federal Coal Mine Health and Safety Act of 1969, as  
4 amended, for claims incurred under said Act, including all  
5 claims where the date of last exposure is on or before the thirty-  
6 first day of December, two thousand five, without regard to the  
7 date the claim is filed, the executive director shall disburse the  
8 Coal-Workers' Pneumoconiosis Fund in the amounts and to the  
9 persons as directed by the order: *Provided*, That effective upon  
10 the termination of the Workers' Compensation Commission,  
11 disbursement from the Coal-workers' Pneumoconiosis Fund  
12 shall be made upon requisitions signed by the Insurance  
13 Commissioner.

**§23-4B-7. Administration.**



1 (a) The Coal-Workers' Pneumoconiosis Fund shall be  
2 administered by the Executive Director of the Workers'  
3 Compensation Commission, who shall employ any employees  
4 necessary to discharge his or her duties and responsibilities  
5 under this article. All payments of salaries and expenses of the  
6 employees and all expenses peculiar to the administration of  
7 this article shall be made by the State Treasurer from the Coal-  
8 Workers' Pneumoconiosis Fund upon requisitions signed by the  
9 executive director.

10 (b) Notwithstanding any provision of this code to the  
11 contrary, effective from the termination of the Workers'  
12 Compensation Commission, the Coal-Workers' Pneumoconio-  
13 sis Fund shall be administered by the Insurance Commissioner,  
14 who shall employ any employees and contract with any parties  
15 necessary to discharge his or her duties and responsibilities  
16 under this article. All payments of salaries and expenses of the  
17 employees and all expenses peculiar to the administration of  
18 this article shall be made by the State Treasurer from the Coal-  
19 Workers' Pneumoconiosis Fund upon requisitions signed by the  
20 Insurance Commissioner: *Provided*, That the employers'  
21 mutual insurance company established pursuant to article two-c  
22 of this chapter shall be the administrator of the Coal-Workers'  
23 Pneumoconiosis Fund for a term not to exceed three years  
24 following the termination of the Workers' Compensation  
25 Commission pursuant to an agreement to be entered into  
26 between the Insurance Commissioner and the Company prior to  
27 the termination of the Workers' Compensation Commission.  
28 The Company's administrative duties may include, but not be  
29 limited to, receipt of all claims, processing said claims, provid-  
30 ing for the payment of said claims through the State Treasurer's  
31 office and ensuring, through the selection and assignment of  
32 counsel, that claims decisions are properly defended. Any  
33 contract entered into by the Insurance Commissioner for the  
34 administration of the Coal-Workers' Pneumoconiosis Fund

35 thereafter shall be subject to the procedures set forth in article  
36 three, chapter five-a of this code.

**§23-4B-9. Closure of Coal-Workers' Pneumoconiosis Fund and  
coverage provided by the successor of the commis-  
sion.**

1       Upon the termination of the commission, the Coal-Work-  
2       ers' Pneumoconiosis Fund shall close and the company shall  
3       offer insurance to provide for the benefits required by this  
4       article until at least the thirty-first day of December, two  
5       thousand eight. All claims payment obligations, including  
6       indemnity benefits, medical benefits, administrative and all  
7       other expenses necessary for the administration and defense of  
8       claims, where the date of last exposure is on or before the  
9       thirty-first day of December, two thousand five, without regard  
10      to the date the claim is filed, shall be an obligation of the Coal-  
11      Workers' Pneumonoconiosis Fund created in this article and not  
12      of the company.



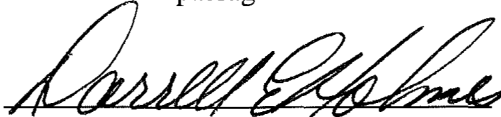
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

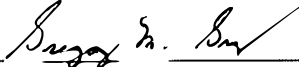
  
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Chairman Senate Committee

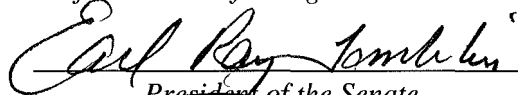
  
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Chairman House Committee

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 25th  
day of November, 2005.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

NOV 16 2005

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