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SB 223

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OFF. OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 223

(By Senator Minard)

PASSED March 11, 2006

In Effect 90 days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 223

(BY SENATOR MINARD)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §33-2-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-20-12 of said code; to amend and reenact §33-24-4 of said code; to amend and reenact §33-25-10 of said code; and to amend and reenact §33-25D-18 of said code, all relating to examinations of insurance and health care entities; increasing the time in which insurers, rating organizations and certain health care entities may respond to examination reports from the Insurance Commissioner; clarifying that the Insurance Fraud Prevention Act applies to certain health care entities; and increasing the minimum period in which examinations of certain health care entities must be conducted by the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

That §33-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-20-12 of said code be amended and reenacted; that §33-24-4 of said code be amended

and reenacted; that §33-25-10 of said code be amended and reenacted; and that §33-25D-18 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

1 (a) The purpose of this section is to provide an effective
2 and efficient system for examining the activities, opera-
3 tions, financial condition and affairs of all persons trans-
4 acting the business of insurance in this state and all
5 persons otherwise subject to the jurisdiction of the com-
6 missioner. The provisions of this section are intended to
7 enable the commissioner to adopt a flexible system of
8 examinations which directs resources as may be consid-
9 ered appropriate and necessary for the administration of
10 the insurance and insurance-related laws of this state.

11 (b) For purposes of this section, the following definitions
12 shall apply:

13 (1) "Commissioner" means the Commissioner of Insur-
14 ance of this state;

15 (2) "Company" or "insurance company" means any
16 person engaging in or proposing or attempting to engage
17 in any transaction or kind of insurance or surety business
18 and any person or group of persons who may otherwise be
19 subject to the administrative, regulatory or taxing author-
20 ity of the commissioner, including, but not limited to, any
21 domestic or foreign stock company, mutual company,
22 mutual protective association, farmers mutual fire compa-
23 nies, fraternal benefit society, reciprocal or interinsurance
24 exchange, nonprofit medical care corporation, nonprofit
25 health care corporation, nonprofit hospital service associa-
26 tion, nonprofit dental care corporation, health mainte-
27 nance organization, captive insurance company, risk
28 retention group or other insurer regardless of the type of
29 coverage written, benefits provided or guarantees made by
30 each;

31 (3) "Department" means the Department of Insurance of
32 this state; and

33 (4) "Examiners" means the Commissioner of Insurance
34 or any individual or firm having been authorized by the
35 commissioner to conduct an examination pursuant to this
36 section, including, but not limited to, the commissioner's
37 deputies, other employees, appointed examiners or other
38 appointed individuals or firms who are not employees of
39 the Department of Insurance.

40 (c) The commissioner or his or her examiners may
41 conduct an examination under this section of any company
42 as often as the commissioner in his or her discretion
43 considers appropriate. The commissioner or his or her
44 examiners shall at least once every five years visit each
45 domestic insurer and thoroughly examine its financial
46 condition and methods of doing business and ascertain
47 whether it has complied with all the laws and regulations
48 of this state. The commissioner may also examine the
49 affairs of any insurer applying for a license to transact any
50 insurance business in this state.

51 (d) The commissioner or his or her examiners shall, at a
52 minimum, conduct an examination of every foreign or
53 alien insurer licensed in this state not less frequently than
54 once every five years. The examination of an alien insurer
55 may be limited to its United States business: *Provided*,
56 That in lieu of an examination under this section of any
57 foreign or alien insurer licensed in this state, the commis-
58 sioner may accept an examination report on the company
59 as prepared by the insurance department for the com-
60 pany's state of domicile or port-of-entry state until the
61 first day of January, one thousand nine hundred ninety-
62 four. Thereafter, the reports may only be accepted if:

63 (1) The insurance department was at the time of the
64 examination accredited under the National Association of
65 Insurance Commissioners' Financial Regulation Standards
66 and Accreditation Program; or

67 (2) The examination is performed under the supervision
68 of an accredited insurance department or with the partici-
69 pation of one or more examiners who are employed by an
70 accredited state insurance department and who, after a
71 review of the examination work papers and report, state
72 under oath that the examination was performed in a
73 manner consistent with the standards and procedures
74 required by their insurance department.

75 (e) In scheduling and determining the nature, scope and
76 frequency of examinations conducted pursuant to this
77 section, the commissioner may consider such matters as
78 the results of financial statement analyses and ratios,
79 changes in management or ownership, actuarial opinions,
80 reports of independent certified public accountants and
81 other criteria as set forth in the examiners' handbook
82 adopted by the National Association of Insurance Com-
83 missioners and in effect when the commissioner exercises
84 discretion under this section.

85 (f) For purposes of completing an examination of any
86 company under this section, the commissioner may
87 examine or investigate any person, or the business of any
88 person, insofar as the examination or investigation is, in
89 the sole discretion of the commissioner, necessary or
90 material to the examination of the company.

91 (g) The commissioner may also cause to be examined, at
92 the times as he or she considers necessary, the books,
93 records, papers, documents, correspondence and methods
94 of doing business of any agent, broker, excess lines broker
95 or solicitor licensed by this state. For these purposes, the
96 commissioner or his or her examiners shall have free
97 access to all books, records, papers, documents and
98 correspondence of all the agents, brokers, excess lines
99 brokers and solicitors wherever the books, records, papers,
100 documents and records are situate. The commissioner may
101 revoke the license of any agent, broker, excess lines broker
102 or solicitor who refuses to submit to the examination.

103 (h) In addition to conducting an examination, the
104 commissioner or his or her examiners may, as the commis-
105 sioner considers necessary, analyze or review any phase of
106 the operations or methods of doing business of an insurer,
107 agent, broker, excess lines broker, solicitor or other
108 individual or corporation transacting or attempting to
109 transact an insurance business in the State of West
110 Virginia. The commissioner may use the full resources
111 provided by this section in carrying out these responsibili-
112 ties, including any personnel and equipment provided by
113 this section as the commissioner considers necessary.

114 (i) Examinations made pursuant to this section shall be
115 conducted in the following manner:

116 (1) Upon determining that an examination should be
117 conducted, the commissioner or his or her designee shall
118 issue an examination warrant appointing one or more
119 examiners to perform the examination and instructing
120 them as to the scope of the examination. The appointment
121 of any examiners pursuant to this section by the commis-
122 sioner shall not be subject to the requirements of article
123 three, chapter five-a of this code, except that the contracts
124 and agreements shall be approved as to form and confor-
125 mity with applicable law by the Attorney General. In
126 conducting the examination, the examiner shall observe
127 those guidelines and procedures set forth in the examiners'
128 handbook adopted by the National Association of Insur-
129 ance Commissioners. The commissioner may also employ
130 any other guidelines or procedures as the commissioner
131 may consider appropriate;

132 (2) Every company or person from whom information is
133 sought, its officers, directors and agents shall provide to
134 the examiners appointed under subdivision (1) of this
135 subsection timely, convenient and free access at all
136 reasonable hours at its offices to all books, records,
137 accounts, papers, documents and any or all computer or
138 other recordings relating to the property, assets, business
139 and affairs of the company being examined. The officers,

140 directors, employees and agents of the company or person
141 shall facilitate the examination and aid in the examination
142 so far as it is in their power to do so;

143 (3) The refusal of any company, by its officers, directors,
144 employees or agents, to submit to examination or to
145 comply with any reasonable written request of the exam-
146 iners shall be grounds for suspension, revocation, refusal
147 or nonrenewal of any license or authority held by the
148 company to engage in an insurance or other business
149 subject to the commissioner's jurisdiction. Any proceed-
150 ings for suspension, revocation, refusal or nonrenewal of
151 any license or authority shall be conducted pursuant to
152 section eleven of this article;

153 (4) The commissioner or his or her examiners shall have
154 the power to issue subpoenas, to administer oaths and to
155 examine under oath any person as to any matter pertinent
156 to the examination, analysis or review. The subpoenas
157 shall be enforced pursuant to the provisions of section six
158 of this article;

159 (5) When making an examination, analysis or review
160 under this section, the commissioner may retain attorneys,
161 appraisers, independent actuaries, independent certified
162 public accountants, professionals or specialists with
163 training or experience in reinsurance, investments or
164 information systems or other professionals and specialists
165 as examiners, the cost of which shall be borne by the
166 company which is the subject of the examination, analysis
167 or review or, in the commissioner's discretion, paid from
168 the Commissioner's Examination Revolving Fund. The
169 commissioner may recover costs paid from the Commis-
170 sioner's Examination Revolving Fund pursuant to this
171 subdivision from the company upon which the examina-
172 tion, analysis or review is conducted unless the subject of
173 the examination, analysis or review is an individual
174 described in subdivision (2), subsection (q) of this section;

175 (6) Nothing contained in this section may be construed
176 to limit the commissioner's authority to terminate or
177 suspend any examination, analysis or review in order to
178 pursue other legal or regulatory action pursuant to the
179 insurance laws of this state. The commissioner or his or
180 her examiners may at any time testify and offer other
181 proper evidence as to information secured during the
182 course of an examination, analysis or review whether or
183 not a written report of the examination has at that time
184 either been made, served or filed in the commissioner's
185 office;

186 (7) Nothing contained in this section may be construed
187 to limit the commissioner's authority to use and, if appro-
188 priate, to make public any final or preliminary examina-
189 tion report, any examiner or company workpapers or other
190 documents or any other information discovered or devel-
191 oped during the course of any examination, analysis or
192 review in the furtherance of any legal or regulatory action
193 which the commissioner may, in his or her sole discretion,
194 consider appropriate. An examination report, when filed,
195 shall be admissible in evidence in any action or proceeding
196 brought by the commissioner against an insurance com-
197 pany, its officers or agents and shall be prima facie
198 evidence of the facts stated therein.

199 (j) Examination reports prepared pursuant to the
200 provisions of this section shall comply with the following
201 requirements:

202 (1) All examination reports shall be comprised of only
203 facts appearing upon the books, records or other docu-
204 ments of the company, its agents or other persons exam-
205 ined or as ascertained from the testimony of its officers or
206 agents or other persons examined concerning its affairs
207 and any conclusions and recommendations the examiners
208 find reasonably warranted from the facts;

209 (2) No later than sixty days following completion of the
210 examination the examiner in charge shall file with the

211 commissioner a verified written report of examination
212 under oath. Upon receipt of the verified report, the
213 commissioner shall transmit the report to the company
214 examined, together with a notice which shall afford the
215 company examined a reasonable opportunity of not more
216 than thirty days to make a written submission or rebuttal
217 with respect to any matters contained in the examination
218 report;

219 (3) Within thirty days of the end of the period allowed
220 for the receipt of written submissions or rebuttals the
221 commissioner shall fully consider and review the report,
222 together with any written submissions or rebuttals and
223 any relevant portions of the examiner's workpapers and
224 enter an order:

225 (A) Adopting the examination report as filed or with
226 modification or corrections. If the examination report
227 reveals that the company is operating in violation of any
228 law, rule or prior order of the commissioner, the commis-
229 sioner may order the company to take any action the
230 commissioner considers necessary and appropriate to cure
231 the violation; or

232 (B) Rejecting the examination report with directions to
233 the examiners to reopen the examination for purposes of
234 obtaining additional data, documentation or information
235 and refiling pursuant to subdivision (2) of this subsection;
236 or

237 (C) Calling for an investigatory hearing with no less than
238 twenty days' notice to the company for purposes of
239 obtaining additional documentation, data, information
240 and testimony;

241 (4) All orders entered pursuant to this subsection shall be
242 accompanied by findings and conclusions resulting from
243 the commissioner's consideration and review of the
244 examination report, relevant examiner workpapers and
245 any written submissions or rebuttals. Any order issued
246 pursuant to paragraph (A), subdivision (3) of this subsec-

247 tion shall be considered a final administrative decision and
248 may be appealed pursuant to section fourteen of this
249 article and shall be served upon the company by certified
250 mail, together with a copy of the adopted examination
251 report. Within thirty days of the issuance of the adopted
252 report the company shall file affidavits executed by each
253 of its directors stating under oath that they have received
254 a copy of the adopted report and related orders.

255 (k) Hearings conducted pursuant to this section shall be
256 subject to the following requirements:

257 (1) Any hearing conducted pursuant to this section by
258 the commissioner or the commissioner's authorized
259 representative shall be conducted as a nonadversarial,
260 confidential investigatory proceeding as necessary for the
261 resolution of any inconsistencies, discrepancies or disputed
262 issues apparent upon the face of the filed examination
263 report or raised by or as a result of the commissioner's
264 review of relevant workpapers or by the written submis-
265 sion or rebuttal of the company. Within twenty days of the
266 conclusion of any hearing, the commissioner shall enter an
267 order pursuant to paragraph (A), subdivision (3), subsec-
268 tion (j) of this section;

269 (2) The commissioner may not appoint an examiner as an
270 authorized representative to conduct the hearing. The
271 hearing shall proceed expeditiously with discovery by the
272 company limited to the examiner's workpapers which tend
273 to substantiate any assertions set forth in any written
274 submission or rebuttal. The commissioner or the commis-
275 sioner's representative may issue subpoenas for the
276 attendance of any witnesses or the production of any
277 documents considered relevant to the investigation
278 whether under the control of the commissioner, the
279 company or other persons. The documents produced shall
280 be included in the record and testimony taken by the
281 commissioner or the commissioner's representative shall
282 be under oath and preserved for the record. Nothing
283 contained in this section shall require the commissioner to

284 disclose any information or records which would indicate
285 or show the existence or content of any investigation or
286 activity of a criminal justice agency;

287 (3) The hearing shall proceed with the commissioner or
288 the commissioner's representative posing questions to the
289 persons subpoenaed. Thereafter, the company and the
290 department may present testimony relevant to the investi-
291 gation. Cross-examination may be conducted only by the
292 commissioner or the commissioner's representative. The
293 company and the commissioner shall be permitted to make
294 closing statements and may be represented by counsel of
295 their choice.

296 (l) Adoption of the examination report shall be subject to
297 the following requirements:

298 (1) Upon the adoption of the examination report under
299 paragraph (A), subdivision (3), subsection (j) of this
300 section, the commissioner may continue to hold the
301 content of the examination report as private and confiden-
302 tial information for a period of ninety days except to the
303 extent provided in subdivision (6), subsection (i) of this
304 section. Thereafter, the commissioner may open the report
305 for public inspection so long as no court of competent
306 jurisdiction has stayed its publication;

307 (2) Nothing contained in this section may prevent or be
308 construed as prohibiting the commissioner from disclosing
309 the content of an examination report, preliminary exami-
310 nation report or results or any matter relating thereto or
311 the results of any analysis or review to the insurance
312 department of this or any other state or country or to law-
313 enforcement officials of this or any other state or agency
314 of the federal government at any time, so long as the
315 agency or office receiving the report or matters relating
316 thereto agrees in writing to hold it confidential and in a
317 manner consistent with this section;

318 (3) In the event the commissioner determines that
319 regulatory action is appropriate as a result of any exami-

320 nation, analysis or review, he or she may initiate any
321 proceedings or actions as provided by law;

322 (4) All working papers, recorded information, documents
323 and copies thereof produced by, obtained by or disclosed
324 to the commissioner or any other person in the course of an
325 examination, analysis or review made under this section
326 must be given confidential treatment and are not subject
327 to subpoena and may not be made public by the commis-
328 sioner or any other person, except to the extent provided
329 in subdivision (5), subsection (i) of this section. Access
330 may also be granted in accordance with section nineteen
331 of this article. The parties must agree in writing prior to
332 receiving the information to provide to it the same confi-
333 dential treatment as required by this section unless the
334 prior written consent of the company to which it pertains
335 has been obtained.

336 (m) The commissioner may require any examiner to
337 furnish a bond in such amount as commissioner may
338 determine to be appropriate and the bond shall be ap-
339 proved, filed and premium paid, with suitable proof
340 submitted to the commissioner, prior to commencement of
341 employment by the commissioner. No examiner may be
342 appointed by the commissioner if the examiner, either
343 directly or indirectly, has a conflict of interest or is
344 affiliated with the management of or owns a pecuniary
345 interest in any person subject to examination under this
346 section. This section shall not be construed to automati-
347 cally preclude an examiner from being:

348 (1) A policyholder or claimant under an insurance policy;

349 (2) A grantor of a mortgage or similar instrument on the
350 examiner's residence to a regulated entity if done under
351 customary terms and in the ordinary course of business;

352 (3) An investment owner in shares of regulated diversi-
353 fied investment companies; or

354 (4) A settlor or beneficiary of a "blind trust" into which
355 any otherwise impermissible holdings have been placed;

356 (5) Notwithstanding the requirements of this subsection,
357 the commissioner may retain, from time to time, on an
358 individual basis qualified actuaries, certified public
359 accountants or other similar individuals who are inde-
360 pendently practicing their professions even though these
361 persons may, from time to time, be similarly employed or
362 retained by persons subject to examination under this
363 section.

364 (n) Personnel conducting examinations, analyses or
365 reviews of either a domestic, foreign or alien insurer shall
366 be compensated for each day worked at a rate set by the
367 commissioner. The personnel shall also be reimbursed for
368 their travel and living expenses at the rate set by the
369 commissioner. Other individuals who are not employees
370 of the Department of Insurance shall all be compensated
371 for their work, travel and living expenses at rates ap-
372 proved by the commissioner or as otherwise provided by
373 law. As used in this section, the costs of an examination,
374 analysis or review means:

375 (1) The entire compensation for each day worked by all
376 personnel, including those who are not employees of the
377 Department of Insurance, the conduct of the examination,
378 analysis or review calculated as hereinbefore provided;

379 (2) Travel and living expenses of all personnel, including
380 those who are not employees of the Department of Insur-
381 ance, directly engaged in the conduct of the examination,
382 analysis or review calculated at the rates as hereinbefore
383 provided for;

384 (3) All other incidental expenses incurred by or on behalf
385 of the personnel in the conduct of any authorized exami-
386 nation, analysis or review.

387 (o) (1) All property and casualty insurers subject to the
388 provisions of this section shall annually pay to the com-
389 missioner on or before the first day of July, one thousand
390 nine hundred ninety-one, and every first day of July
391 thereafter an examination assessment fee of up to five

392 thousand dollars. Four hundred fifty dollars of this fee
393 shall be paid to the Treasurer of the state to the credit of
394 a special revolving fund to be known as the Commis-
395 sioner's Examination Revolving Fund which is hereby
396 established; up to four thousand two hundred dollars shall
397 be paid to the Treasurer of the state to the credit of the
398 Unfair Claims Settlement Practice Trust Fund established
399 in section four-b, article eleven of this chapter and three
400 hundred fifty dollars shall be paid to the Treasurer of the
401 state. If the trust fund has moneys in excess of one million
402 dollars, the examination assessment fee shall be eight
403 hundred dollars and the five thousand dollar fee shall only
404 be reinstated at whatever amount the commissioner deems
405 necessary to maintain the fund, if the fund value goes
406 below one million dollars. The commissioner may at his or
407 her discretion, upon notice to the insurers subject to this
408 subsection, increase this examination assessment fee or
409 levy an additional examination assessment fee of two
410 hundred fifty dollars. In no event may the total examina-
411 tion assessment fee, including any additional examination
412 assessment fee levied, exceed five thousand two hundred
413 fifty dollars per insurer in any calendar year.

414 (2) All insurers other than property and casualty insurers
415 subject to the provisions of this section shall annually pay
416 to the commissioner on or before the first day of July, one
417 thousand nine hundred ninety-one, and every first day of
418 July thereafter an examination assessment fee of eight
419 hundred dollars. Four hundred fifty dollars of this fee
420 shall be paid to the Treasurer of the state to the credit of
421 the Commissioner's Examination Revolving Fund and
422 three hundred fifty dollars shall be paid to the Treasurer
423 of the state. The commissioner may at his or her discre-
424 tion, upon notice to the insurers subject to this subsection,
425 increase this examination assessment fee or levy an
426 additional examination assessment fee of two hundred
427 fifty dollars. In no event may the total examination
428 assessment fee, including any additional examination

429 assessment fee levied, exceed one thousand five hundred
430 dollars per insurer in any calendar year.

431 (p) The moneys collected by the commissioner from an
432 increase or additional examination assessment fee shall be
433 paid to the Treasurer of the state to be credited to the
434 Commissioner's Examination Revolving Fund. Any funds
435 expended or obligated by the commissioner from the
436 Commissioner's Examination Revolving Fund may be
437 expended or obligated solely for defrayment of the costs of
438 examinations, analyses or reviews of the financial affairs
439 and business practices of insurance companies, agents,
440 brokers, excess lines brokers, solicitors or other individu-
441 als or corporations transacting or attempting to transact
442 an insurance business in this state made by the commis-
443 sioner pursuant to this section or for the purchase of
444 equipment and supplies, travel, education and training for
445 the commissioner's deputies, other employees and ap-
446 pointed examiners necessary for the commissioner to
447 fulfill the statutory obligations created by this section.

448 (q) The commissioner may require other individuals who
449 are not employees of the Department of Insurance who
450 have been appointed by the commissioner to conduct or
451 participate in the examination, analysis or review of
452 insurers, agents, brokers, excess lines brokers, solicitors or
453 other individuals or corporations transacting or attempt-
454 ing to transact an insurance business in this state to:

455 (1) Bill and receive payments directly from the insurance
456 company being examined, analyzed or reviewed for their
457 work, travel and living expenses as previously provided in
458 this section; or

459 (2) If an individual agent, broker or solicitor is being
460 examined, analyzed or reviewed, bill and receive payments
461 directly from the Commissioner's Examination Revolving
462 Fund for their work, travel and living expenses as previ-
463 ously provided in this section. The commissioner may
464 recover costs paid from the Commissioner's Examination

465 Revolving Fund pursuant to this subdivision from the
466 person upon whom the examination, analysis or review is
467 conducted.

468 (r) The commissioner and his or her examiners shall be
469 entitled to immunity to the following extent:

470 (1) No cause of action shall arise nor shall any liability
471 be imposed against the commissioner or his or her examin-
472 ers for any statements made or conduct performed in good
473 faith while carrying out the provisions of this section;

474 (2) No cause of action shall arise, nor shall any liability
475 be imposed, against any person for the act of communicat-
476 ing or delivering information or data to the commissioner
477 or his or her examiners pursuant to an examination,
478 analysis or review made under this section if the act of
479 communication or delivery was performed in good faith
480 and without fraudulent intent or the intent to deceive;

481 (3) The commissioner or any examiner shall be entitled
482 to an award of attorney's fees and costs if he or she is the
483 prevailing party in a civil cause of action for libel, slander
484 or any other relevant tort arising out of activities in
485 carrying out the provisions of this section and the party
486 bringing the action was not substantially justified in doing
487 so. For purposes of this section, a proceeding is "substan-
488 tially justified" if it had a reasonable basis in law or fact
489 at the time that it was initiated;

490 (4) This subsection does not abrogate or modify in any
491 way any constitutional immunity or common law or
492 statutory privilege or immunity heretofore enjoyed by any
493 person identified in subdivision (1) of this subsection.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-12. Examinations.

1 (a) The commissioner shall, at least once in five years,
2 make or cause to be made an examination of each rating
3 organization licensed under the provisions of section six of

4 this article and he or she may, as often as he or she may
5 deem it expedient, make or cause to be made an examina-
6 tion of each advisory organization referred to in section
7 ten of this article and of each group, association or other
8 organization referred to in section eleven of this article.
9 The reasonable costs of any such examination shall be paid
10 by the rating organization, advisory organization, or
11 group, association or other organization examined upon
12 presentation to it of a detailed account of such costs. The
13 officers, managers, agents and employees of such rating
14 organization, advisory organization, or group, association
15 or other organization may be examined at any time under
16 oath and shall exhibit all books, records, accounts, docu-
17 ments or agreements governing its method of operation.
18 The commissioner shall furnish two copies of the examina-
19 tion report to the organization, group or association
20 examined not less than thirty days prior to filing same in
21 his or her office. If such organization, group or association
22 so requests in writing, within such thirty-day period, the
23 commissioner shall consider the objections, if any, to such
24 report as proposed and shall not file such report until such
25 modifications, if any, have been made therein as the
26 commissioner deems proper. The report when so filed
27 shall be admissible in any action or proceeding brought by
28 the commissioner against the organization, group or
29 association examined, or its officers or agents, and shall be
30 prima facie evidence of the facts stated therein. The
31 commissioner may withhold the report of any such exami-
32 nation for such time as he or she may deem proper.

33 (b) In lieu of any such examination the commissioner
34 may accept the report of an examination made by the
35 insurance supervisory official of another state, pursuant to
36 the laws of such state.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE
CORPORATIONS, DENTAL SERVICE CORPORATIONS
AND HEALTH SERVICE CORPORATIONS.**

§33-24-4. Exemptions; applicability of insurance laws.

1 Every corporation defined in section two of this article
2 is hereby declared to be a scientific, nonprofit institution
3 and exempt from the payment of all property and other
4 taxes. Every corporation, to the same extent the provi-
5 sions are applicable to insurers transacting similar kinds
6 of insurance and not inconsistent with the provisions of
7 this article, shall be governed by and be subject to the
8 provisions as herein below indicated, of the following
9 articles of this chapter: Article two (Insurance Commis-
10 sioner); article four (general provisions), except that
11 section sixteen of said article may not be applicable
12 thereto; section twenty, article five (borrowing by insur-
13 ers); section thirty-four, article six (fee for form, rate and
14 rule filing); article six-c (guaranteed loss ratios as applied
15 to individual sickness and accident insurance policies);
16 article seven (assets and liabilities); article eight-a (use of
17 clearing corporations and federal reserve book-entry
18 system); article eleven (unfair trade practices); article
19 twelve (insurance producers and solicitors), except that the
20 agent's license fee shall be twenty-five dollars; section
21 two-a, article fifteen (definitions); section two-b, article
22 fifteen (guaranteed issue; limitation of coverage; election;
23 denial of coverage; network plans); section two-d, article
24 fifteen (exceptions to guaranteed renewability); section
25 two-e, article fifteen (discontinuation of particular type of
26 coverage; uniform termination of all coverage; uniform
27 modification of coverage); section two-f, article fifteen
28 (certification of creditable coverage); section two-g, article
29 fifteen (applicability); section four-e, article fifteen
30 (benefits for mothers and newborns); section fourteen,
31 article fifteen (policies discriminating among health care
32 providers); section sixteen, article fifteen (policies not to
33 exclude insured's children from coverage; required ser-
34 vices; coordination with other insurance); section eighteen,
35 article fifteen (equal treatment of state agency); section
36 nineteen, article fifteen (coordination of benefits with
37 medicaid); article fifteen-a (West Virginia Long-Term Care
38 Insurance Act); article fifteen-c (diabetes insurance);
39 section three, article sixteen (required policy provisions);

40 section three-a, article sixteen (same - mental health);
41 section three-d, article sixteen (medicare supplement
42 insurance); section three-f, article sixteen (required policy
43 provisions - treatment of temporomandibular joint
44 disorder and craniomandibular disorder); section three-j,
45 article sixteen (hospital benefits for mothers and new-
46 borns); section three-k, article sixteen (limitations on
47 preexisting condition exclusions for health benefit plans);
48 section three-l, article sixteen (renewability and modifica-
49 tion of health benefit plans); section three-m, article
50 sixteen (creditable coverage); section three-n, article
51 sixteen (eligibility for enrollment); section eleven, article
52 sixteen (group policies not to exclude insured's children
53 from coverage; required services; coordination with other
54 insurance); section thirteen, article sixteen (equal treat-
55 ment of state agency); section fourteen, article sixteen
56 (coordination of benefits with medicaid); section sixteen,
57 article sixteen (insurance for diabetics); article sixteen-a
58 (group health insurance conversion); article sixteen-c
59 (employer group accident and sickness insurance policies);
60 article sixteen-d (marketing and rate practices for small
61 employer accident and sickness insurance policies); article
62 twenty-six-a (West Virginia Life and Health Insurance
63 Guaranty Association Act), after the first day of October,
64 one thousand nine hundred ninety-one; article twenty-
65 seven (insurance holding company systems); article
66 twenty-eight (individual accident and sickness insurance
67 minimum standards); article thirty-three (annual audited
68 financial report); article thirty-four (administrative
69 supervision); article thirty-four-a (standards and commis-
70 sioner's authority for companies deemed to be in hazard-
71 ous financial condition); article thirty-five (criminal
72 sanctions for failure to report impairment); article thirty-
73 seven (managing general agents); and article forty-one
74 (Insurance Fraud Prevention Act) and no other provision
75 of this chapter may apply to these corporations unless
76 specifically made applicable by the provisions of this
77 article. If, however, the corporation is converted into a
78 corporation organized for a pecuniary profit or if it

79 transacts business without having obtained a license as
80 required by section five of this article, it shall thereupon
81 forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

**§33-25-10. Examination of corporation; report of examination;
objections to report; access to books, records, etc.;
removal of records, etc., from state.**

1 (a) The commissioner or his or her accredited examiners
2 may at any reasonable time and shall, at least once every
3 five years, visit each health care corporation and thor-
4 oughly examine its financial condition and methods of
5 doing business and ascertain whether it has complied with
6 all of the laws and rules of this state. All expenses of each
7 such examination conducted shall be borne by such
8 corporation. The commissioner shall make a full written
9 report of each such examination of the corporation,
10 certified to by the commissioner or the examiner in charge
11 of such examinations. The commissioner shall furnish a
12 copy of the report to the corporation examined not less
13 than thirty days prior to filing the same in his or her office.
14 If such corporation so requests in writing, within such
15 thirty-day period, the commissioner shall consider the
16 objections of such corporation to the report as proposed
17 and shall not so file the report until after such modifica-
18 tions, if any, have been made therein as the commissioner
19 deems proper. The report, when filed, shall be admissible
20 in evidence in any action or proceeding brought by the
21 commissioner against the corporation examined, or its
22 officers or agents, and shall be prima facie evidence of the
23 facts stated therein. The commissioner or his or her
24 examiners may at any time testify and offer other proper
25 evidence as to information secured during the course of an
26 examination, whether or not a written report of the
27 examination has at that time been either made, served or
28 filed in the commissioner's office.

29 (b) For such purposes the commissioner, his or her
30 deputies and employees shall have free access to all books,

31 records, papers, documents and correspondence of any
32 such corporation and such books, records, papers, docu-
33 ments and records shall be and remain in the State of West
34 Virginia. The licenses of said corporation shall be auto-
35 matically revoked if such books, records, papers, docu-
36 ments and records are taken outside the State of West
37 Virginia without the prior written approval of the commis-
38 sioner.

39 (c) The commissioner shall revoke the license of any such
40 corporation which refuses to submit to such examination.

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION ACT.

§33-25D-18. Examinations.

1 (a) The commissioner may make an examination of the
2 affairs of any prepaid limited health service organization
3 and providers with whom the organization has contracts,
4 agreements or other arrangements as often as he or she
5 considers it necessary for the protection of the interests of
6 the people of this state but not less frequently than once
7 every five years.

8 (b) The commissioner may contract with the Department
9 of Health and Human Resources, any entity which has
10 been accredited by a nationally recognized accrediting
11 organization and has been approved by the commissioner
12 to make examinations concerning the quality of health
13 care services of any prepaid limited health service organi-
14 zation and providers with whom the organization has
15 contracts, agreements or other arrangements, or any such
16 entity contracted with by the Department of Health and
17 Human Resources, as often as it considers necessary for
18 the protection of the interests of the people of this state,
19 but not less frequently than once every five years: *Pro-*
20 *vided*, That in making the examination, the Department of
21 Health and Human Resources or the accredited entity shall
22 utilize the services of persons or organizations with
23 demonstrable expertise in assessing quality of health care.

24 (c) Every prepaid limited health service organization and
25 affiliated provider shall submit its books and records to
26 the examinations and in every way facilitate them. For
27 the purpose of examinations, the commissioner and the
28 Department of Health and Human Resources have all
29 powers necessary to conduct the examinations, including,
30 but not limited to, the power to issue subpoenas, the power
31 to administer oaths to and examine the officers and agents
32 of the prepaid limited health service organization and the
33 principals of the providers concerning their business.

34 (d) The prepaid limited health service organization is
35 subject to the provisions of section nine, article two of this
36 chapter in regard to the expense and conduct of examina-
37 tions.

38 (e) In lieu of the examination, the commissioner may
39 accept the report of an examination made by another
40 state.

41 (f) The expenses of an examination assessing quality of
42 health care under subsection (b) of this section and section
43 nineteen of this article shall be reimbursed pursuant to
44 subdivision (5), subsection (i), section nine, article two of
45 this chapter.

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

Clara White

.....
Chairman Senate Committee

W. Bury

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Harrel E. Holmes

.....
Clerk of the Senate

Bugsy M. Bond

.....
Clerk of the House of Delegates

Carl Ray Semler

.....
President of the Senate

Y. J. ...

.....
Speaker House of Delegates

The within *is* approved this the *31st*

Day of *March*, 2006.

Paul ...

.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 30 2006

Time 12:15 pm