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**Senate Bill No. 451**

(By Senators Minard, Palumbo, Prezioso and Plymale)

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[Introduced February 7, 2011; referred to the Committee on Labor;  
and then to the Committee on the Judiciary.]

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A BILL to amend and reenact §23-2C-10 of the Code of West Virginia, 1931, as amended, relating to the administration of the West Virginia workers' compensation adverse risk plan.

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

That §23-2C-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

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

(b) To qualify for coverage under the plan, an employer must have been categorically declined coverage by at least two insurers that are not affiliated with each other. The employer has the

1 burden of establishing that at least two unaffiliated insurers are  
2 unwilling to provide coverage at any premium level that is  
3 reasonably related to the risk presented by the employer. The  
4 assigned risk plan may also provide for other reasonable  
5 qualifications and for the termination of coverage under the plan  
6 for specified reasons.

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

17 (d) The Insurance Commissioner may designate any third party,  
18 including any private carrier or rating organization with  
19 substantial experience in developing and administering similar  
20 programs in other states, to develop and administer the assigned  
21 risk plan: ~~for a period of three years, and thereafter, shall~~  
22 ~~contract with any qualified party, including the then current~~  
23 ~~administrator, to continue the administration of the assigned risk~~  
24 ~~plan:~~ *Provided,* That the Insurance Commissioner must approve the

1 plan prior to the plan becoming operative. The plan established  
2 pursuant to this section shall require that all private carriers  
3 participate as a condition of their authority to transact business  
4 in this state.

5 (e) In the event the plan incurs a deficit in one or more  
6 policy years, the Insurance Commissioner may assess all private  
7 carriers providing workers' compensation insurance in voluntary  
8 market funds as are necessary to cover the deficits. The  
9 assessments shall result in an equitable distribution of costs  
10 among private carriers based upon premiums received by the private  
11 carriers in the private market. Assessments made upon the policies  
12 of each private carrier pursuant to this section may be collected  
13 by each carrier in the form of a surcharge.

NOTE: The purpose of this bill is to clarify that the Insurance Commissioner may designate the administrator of the adverse risk plan.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.