WEST VIRGINIA CODE: §23-1-1B

§23-1-1b. Powers and duties of Insurance Commissioner.

The Insurance Commissioner shall have the power and duty to:

(1) Establish operating guidelines and policies designed to ensure the effective regulation of the workers' compensation insurance market in West Virginia and effectuate the provisions of this chapter;

(2) Employ, direct, and supervise all employees required in the connection with the performance of the duties assigned to the Insurance Commissioner by this chapter;

(3) Reorganize the work of the Insurance Commissioner, its divisions, sections, and offices to the extent necessary to achieve the most efficient performance of its functions.

(4) Keep accurate and complete accounts and records necessary to the collection, administration, and distribution of the workers' compensation funds created in §23-2C-6 of this code;

(5) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(6) Ensure that all employees of the Insurance Commissioner follow the orders, operating guidelines, and policies of the agency as they relate to the agency's overall policymaking, management, and adjudicatory duties under this chapter;

(7) Delegate all powers and duties vested in the Insurance Commissioner to his or her appointees and employees: *Provided*, That the Insurance Commissioner is responsible for their acts;

(8)(A) Contract or employ counsel to perform all legal services for the Insurance Commissioner including, but not limited to, representing the Insurance Commissioner in any administrative proceeding and in any state or federal court. Additionally, the Insurance Commissioner may, but shall not be required to, call upon the Attorney General for legal assistance and representation as provided by law. The Attorney General shall not approve or exercise authority over in-house counsel or contract counsel hired pursuant to this section;

(B) In addition to the authority granted by this section to the Insurance Commissioner and notwithstanding any provision to the contrary elsewhere in this code, use any attorney regularly employed by the Insurance Commissioner or the Office of the Attorney General to represent the Insurance Commissioner in any matter arising from the performance of his or her duties or the execution of his or her powers under this chapter.

(9) Propose rules for approval by the Industrial Council created in §23-2C-5 of this code,

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under which agencies of this state shall revoke or refuse to grant, issue, or renew any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit who is in default as set forth in §23-2C-19(d)(1) of this code or listed in the Employer Violator System with the Insurance Commissioner. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations. An employing unit is not in default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with its obligations under the repayment agreements;

(A) The rules shall provide that, before granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit, the designated agencies shall review a list or lists provided by the Insurance Commissioner of employers that are in default. If the employing unit's name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default, may grant, issue, or renew the contract, license, permit, certificate, or other authority to conduct a trade, profession, or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter. The prohibition against granting, issuing, or renewing any contract, license, permit, certificate, or other authority under this subdivision shall remain in full force and effect as promulgated under §21A-2-6 of this code until the rules required by this subdivision are promulgated and in effect;

(B) The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition the Insurance Commissioner to be exempt from the provisions of the rules;

(10) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest, and penalties thereon and attorneys' fees and costs collected under the provisions of this chapter. The amounts collected shall not be treated by the Auditor or Treasurer as part of the general revenue of the state;

(11) Regularly audit or examine and monitor programs established by self-insured employers or third-party administrators under this chapter to ensure compliance with the Insurance Commissioner's rules and the law;

(12) Oversee the Insurance Fraud Unit that has the responsibility and authority for investigating and controlling insurance fraud and workers' compensation fraud in the State of West Virginia as set forth in §33-41-1 *et seq*. of this code. The fraud unit shall be under the supervision of an inspector general, who shall be appointed by the Insurance Commissioner. Nothing in this section shall preclude private carriers from independently investigating and controlling abuse.

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(A) The inspector general shall, with the consent and advice of the Insurance Commissioner, employ all personnel as necessary for the institution, development and finalization of procedures and investigations which serve to ensure that only necessary and proper workers' compensation benefits and expenses are paid to or on behalf of injured employees. Qualification, compensation, and personnel practice relating to the employees of the fraud and abuse unit, including that of the position of inspector general, shall be governed by the provisions of the statutes and rules of the classified service pursuant to §29-6-1, *et seq*. of this code. The inspector general shall supervise all personnel;

(B) The fraud unit shall have the following powers and duties:

(i) The fraud unit will take action to identify and prevent and discourage any and all fraud and abuse;

(ii) The fraud unit, in cases of criminal fraud, has the authority to review and prosecute those cases for violations of §23-1-1 *et seq*., §33-1-1 *et seq*., §61-3-1 *et seq*., and §61-4-5 of this code, as well as any other criminal statutes that may be applicable. In addition, the fraud unit not only has the authority to prosecute and refer cases involving criminal fraud to appropriate state authorities for prosecution, but it also has the authority, and is encouraged, to cooperate with the appropriate federal authorities for review and possible prosecution, by either state or federal agencies, of cases involving criminal fraud concerning the Workers' Compensation System in West Virginia; and

(iii) The fraud unit is expressly authorized to initiate investigations and participate in the development of, and if necessary, the prosecution of any health care provider, including a provider of rehabilitation services and in-home caretaker, alleged to have violated the provisions of §23-4-3c of this code;

(C) Specific personnel, designated by the inspector general, shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates;

(D) Notwithstanding any provision of this code to the contrary, specific personnel designated by the inspector general may carry handguns in the course of their official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction, which qualifications shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: *Provided*, That nothing in this subsection shall be construed to include the personnel so designated by the inspector general to carry handguns within the meaning of the term law-enforcement official as defined in §30-29-1 of this code;

(E) The fraud unit is not subject to any requirement of §6-9a-1 et seq. of this code and the investigations conducted by the fraud unit and the materials placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of chapter 29B of this code;

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(F) In the event that a final judicial decision adjudges that the statewide prosecutorial powers vested by this subdivision in the fraud unit may only be exercised by a public official other than an employee of the fraud unit, then to that extent the provisions of this subdivision vesting statewide prosecutorial power shall thenceforth be of no force and effect, the remaining provisions of this subdivision shall continue in full force and effect, and prosecutions hereunder may only be exercised by the prosecuting attorneys of this state and their assistants or special assistant prosecuting attorneys appointed as provided by law;

(13) Enter into interagency agreements to assist in exchanging information and fulfilling the default provisions of this chapter;

(14) Establish an employer violator system to identify individuals and employers who are in default, as defined by §23-2C-19(d)(1) of this code. The employer violator system shall prohibit violators who own, control or have a 10 percent or more ownership interest, or other ownership interest as may be defined by the Insurance Commissioner, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the Insurance Commissioner or has entered into and remains in compliance with a repayment agreement;

(15) Perform all other functions necessary for the regulation of the workers' compensation insurance industry, including, but not limited to: ratemaking, self-insurance, office of judges, and board of review; and

(16) Perform all duties set forth in §23-2C-1 *et seq*. of this code.

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