WEST VIRGINIA CODE: §23-2-5a

§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of Secretary of State to register liens; distraint powers; insolvency proceedings; Secretary of State to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.

(a) The Insurance Commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer, the employer shall pay the costs of the action. A civil action under this section shall be given preference on the calendar of the court over all other civil actions. Upon prevailing in a civil action, the Insurance Commissioner is entitled to recover its attorneys' fees and costs of action from the employer.

(b) In addition to the provisions of §23-2-5a(a) of this code, any payment, interest and penalty due and unpaid under this chapter is a personal obligation of the employer immediately due and owing to the Insurance Commissioner and shall, in addition, be a lien enforceable against all the property of the employer: *Provided*, That the lien shall not be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in §38-10C-1 of this code: *Provided, however*, That the lien may be enforced as other judgment liens are enforced through the provisions of said chapter and the same is considered deemed by the circuit court to be a judgment lien for this purpose.

(c) In addition to all other civil remedies prescribed, the Insurance Commissioner may in the name of the state, after giving appropriate notice as required by due process, distrain upon any personal property, including intangible property, of any employer delinquent for any payment, interest, and penalty thereon. If the Insurance Commissioner has good reason to believe that the property or a substantial portion of the property is about to be removed from the county in which it is situated, upon giving appropriate notice, either before or after the seizure, as is proper in the circumstances, the Insurance Commissioner may likewise distrain in the name of the state before the delinquency occurs. For that purpose, the Insurance Commissioner may require the services of a sheriff of any county in the state in levying the distress in the county in which the sheriff is an officer and in which the personal property is situated. A sheriff collecting any payment, interest, and penalty thereon is entitled to the compensation as provided by law for his or her services in the levy and enforcement of executions. Upon prevailing in any distraint action, the Insurance Commissioner is entitled to recover its attorneys' fees and costs of action from the employer.

(d) In case a business subject to the payments, interest, and penalties thereon imposed under this chapter is operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction the business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in

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administration will permit, for the regular payment of the payments, interest, and penalties as they become due.

(e) The Secretary of State of this state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state or organized under the laws of any other state and admitted to do business in this state, until notified by the Insurance Commissioner that all payments, interest, and penalties thereon against the corporation which is an employer under this chapter have been paid or that provision satisfactory to the Insurance Commissioner has been made for payment.

(f) In any case when an employer is in default to the Old Fund or has a liability to the Uninsured Employer Fund or is in default on a policy or otherwise fails to maintain mandatory workers' compensation coverage, the Insurance Commissioner may bring action in the circuit court of Kanawha County to enjoin the employer from continuing to operate the employer's business as provided for in §33-2-22 of this code: *Provided*, That the Insurance Commissioner may, in his or her sole discretion and as an alternative to this action, require the delinquent employer to file a bond in the form prescribed by the Insurance Commissioner with satisfactory surety in an amount not less than 150 percent of the total payments, interest, and penalties due.

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