WEST VIRGINIA CODE CHAPTER 23 ARTICLE 2

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§23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.

(a) The State of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company, and other emergency service organizations as defined by §15-5-1 *et seq*. of this code, and all persons, firms, associations, and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service, or business in this state, are employers within the meaning of this chapter and are subject to all requirements of this chapter and all rules prescribed by the Industrial Council pursuant to §23-2C-5 of this code.

(b) The following employers are not required to procure workers' compensation insurance, but may elect to do so:

(1) Employers of employees in domestic services;

(2) Employers of five or fewer full-time employees in agricultural service;

(3) Employers of employees while the employees are employed without the state except in cases of temporary employment without the state;

(4) Casual employers. An employer is a casual employer when the number of his or her employees does not exceed three and the period of employment is temporary, intermittent, and sporadic in nature and does not exceed 10 calendar days in any calendar quarter;

(5) Churches;

(6) Employers engaged in organized professional sports activities, including employers of trainers and jockeys engaged in thoroughbred horse racing;

(7) Any volunteer rescue squad or volunteer police auxiliary unit organized under the auspices of a county commission, municipality, or other government entity or political subdivision; volunteer organizations created or sponsored by government entities or political subdivisions; or area or regional emergency medical services boards of directors in furtherance of the purposes of the Emergency Medical Services Act of §16-4C-1 *et seq*. of this code: *Provided*, That if any of the employers described in this subdivision have paid employees, to the extent of those paid employees, the employer shall procure workers' compensation insurance based upon the gross wages of the paid employees, but with regard to the volunteers, the coverage remains optional;

(8) Taxicab drivers of taxicab companies operating under §24A-2-1 *et seq*. of this code, who provide taxicab service pursuant to a written or electronic agreement that identifies the taxicab driver as an independent contractor consistent with the West Virginia Employment Law Worker Classification Act as set forth in §21-5I-1 *et seq*. of this code: *Provided*, That any such taxicab driver identified as an independent contractor shall not be eligible for workers'

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compensation benefits under this chapter as an employee of the taxicab company.

(9) Any employer whose employees are eligible to receive benefits under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq*., but only for those employees eligible for those benefits.

(c) Notwithstanding any other provision of this chapter to the contrary, whenever there are churches in a circuit which employ one individual clergyman and the payments to the clergyman from the churches constitute his or her full salary, such circuit or group of churches may elect to be considered a single employer.

(d) The following employers may elect not to provide coverage to certain of their employees under the provisions of this chapter:

(1) Any political subdivision of the state including county commissions and municipalities, boards of education, or emergency services organizations organized under the auspices of a county commission may elect not to provide coverage to any elected official. The election not to provide coverage does not apply to individuals in appointed positions or to any other employees of the political subdivision;

(2) If an employer is a partnership, sole proprietorship, association, or corporation, the employer may elect not to include as an "employee" within this chapter any member of the partnership, the owner of the sole proprietorship, or any corporate officer or member of the board of directors of the association or corporation. The officers of a corporation or an association shall consist of a president, a vice president, a secretary, and a treasurer, each of whom is elected by the board of directors at the time and in the manner prescribed by the bylaws. Other officers and assistant officers that are considered necessary may be elected or appointed by the board of directors or chosen in any other manner prescribed by the bylaws and, if elected, appointed, or chosen, the employer may elect not to include the officer or assistant officer as an "employee" within the meaning of this chapter: *Provided*, That except for those persons who are members of the board of directors or who are the corporation's or association's president, vice president, secretary, and treasurer and who may be excluded by reason of their positions from workers' compensation benefits required by this chapter even though their duties, responsibilities, activities, or actions may have a dual capacity of work which is ordinarily performed by an officer and also of work which is ordinarily performed by a worker, an administrator, or an employee who is not an officer, no other officer or assistant officer who is elected or appointed shall be excluded by election from coverage or be denied benefits merely because he or she is an officer or assistant officer if, as a matter of fact:

(A) He or she is engaged in a dual capacity of having the duties and responsibilities for work ordinarily performed by an officer and also having duties and work ordinarily performed by a worker, administrator, or employee who is not an officer;

(B) He or she is engaged ordinarily in performing the duties of a worker, an administrator,

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or an employee who is not an officer and receives pay for performing the duties in the capacity of an employee; or

(C) He or she is engaged in an employment palpably separate and distinct from his or her official duties as an officer of the association or corporation;

(3) If an employer is a limited liability company, the employer may elect not to include as an "employee" within this chapter a total of no more than four persons, each of whom are acting in the capacity of manager, officer, or member of the company.

(e) "Regularly employing" or "regular employment" means employment by an employer which is not a casual employer under this section.

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§23-2-1a. Employees subject to chapter.

(a) Employees subject to this chapter are all persons in the service of employers, except those classified as an independent contractor pursuant to §21-5I-4 of this code, and employed by them for the purpose of carrying on the industry, business, service, or work in which they are engaged, including, but not limited to:

(1) Persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state;

(2) Every person in the service of the state or of any political subdivision or agency thereof, under any contract of hire, express or implied, and every appointed official or officer thereof while performing his or her official duties;

(3) Checkweighmen employed according to law;

(4) All members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the director of the department of mines;

(5) All forest firefighters who, under the supervision of the Director of the Division of Natural Resources or his or her designated representative, assist in the prevention, confinement, and suppression of any forest fire; and

(6) Students while participating in a work-based learning experience with an employer approved as a part of the curriculum by the county board. The county board shall be the employer of record of students while participating in unpaid work-based experiences off school premises with employers other than the county board. Students in unpaid work-based learning experiences shall be considered to be paid the amount of wages so as to provide the minimum workers' compensation weekly benefits required by §23-4-6 of this code.

(b) The right to receive compensation under this chapter shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this state relating to the employment of minors, or that he or she obtained his or her employment by misrepresenting his or her age.

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§23-2-1b. Special provisions as to premiums.

[Repealed.]

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§23-2-1c. Extraterritorial coverage; approval and change of agreements.

(a) Whenever there is a possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is performed or is to be performed in a state or states other than this state, the employer and the employee may agree to be bound by the laws of this state or by the laws of any other state in which all or some portion of the work of the employee is to be performed: *Provided*, That nothing in this section shall be construed as to require an agreement in those instances where §23-2-1(b)(3) or §23-2-1a(a)(1) of this code are applicable. If the parties agree to be bound by the laws of this state, an employee injured within the terms and provisions of this chapter is entitled to benefits under this chapter regardless of the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease, and the rights of the employee and his or her dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and as a result of the employment.

(b) If the parties agree to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his or her dependents under the laws of that state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and as a result of the employment without regard to the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease.

(c) If the employee is a resident of a state other than this state and is subject to the terms and provisions of the workers' compensation law or similar laws of a state other than this state, the employee and his or her dependents are not entitled to the benefits payable under this chapter on account of injury, disease, or death in the course of and as a result of employment temporarily within this state, and the rights of the employee and his or her dependents under the laws of the other state shall be the exclusive remedy against the employer on account of any injury, disease or death.

(d) If any employee or his or her dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state for an injury received in the course of and resulting from the employment, the amount awarded or recovered, whether paid or to be paid in future installments, shall be credited against the amount of any benefits payable under this chapter for the same injury.

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§23-2-1d. Prime contractors and subcontractors liability.

(a) The Legislature finds that every prime contractor should be responsible to ensure that any subcontractor with which it directly contracts is either self-insured or maintains workers' compensation coverage throughout the periods during which the services of a subcontractor are used and, further, if the subcontractor is neither self-insured nor covered, then the prime contractor rather than the Uninsured Employer Fund should be responsible for the payment of statutory benefits. It is also the intent of the Legislature that this section not be used as the basis for expanding the liability of a prime contractor beyond the limited purpose of providing coverage in the limited circumstances and in the manner expressly addressed by this section: *Provided*, That receipt by the prime contractor of a certificate of coverage from a subcontractor shall be deemed to relieve the prime contractor of responsibility regarding the subcontractor's workers' compensation coverage.

(b) If an employee of a subcontractor suffers an injury or disease and, on the date of injury or last exposure, his or her employer did not have workers' compensation coverage or was not an approved self-insured employer, and the prime contractor did not obtain certification of coverage from the subcontractor, then that employee may file a claim against the prime contractor for which the subcontractor performed services on the date of injury or last exposure, and such claim shall be administered in the same manner as claims filed by injured employees of the prime contractor: *Provided*, That a subcontractor that subcontracts with another subcontractor shall, with respect to such subcontract, be the prime contractor for the purposes of this section: *Provided, however*, That the provisions of this subsection do not relieve a subcontractor from any requirements of this chapter, including the duty to maintain coverage on its employees. The subcontractor shall provide proof of continuing coverage to the prime contractor by providing a certificate showing current as well as renewal or replacement coverage during the term of the contract between the prime contractor and the subcontractor. The subcontractor shall provide notice to the prime contractor within two business days of cancellation of expiration of coverage.

(c) Notwithstanding that an injured employee of a subcontractor is eligible for workers' compensation benefits pursuant to this section from the prime contractor's carrier or the self-insured prime contractor, whichever is applicable, a subcontractor who has failed to maintain workers' compensation coverage on its employees:

(1) May not claim the exemption from liability provided by §23-2-6 and §23-2-6a of this code;

(2) May be held liable to an injured employee pursuant to the provisions of §23-2-8 of this code; and

(3) Is the designated employer for the purposes of any "deliberate intention" action brought by the injured worker pursuant to the provisions of §23-4-2 of this code.

(d) If a claim of an injured employee of a subcontractor is accepted or conditionally accepted into the Uninsured Employer Fund, both the prime contractor and subcontractor are jointly

and severally liable for any payments made by the fund, and the Insurance Commissioner may seek recovery of the payments, plus administrative costs and attorneys' fees, from the prime contractor, the subcontractor, or both: *Provided*, That a prime contractor who is held liable pursuant to this subsection for the payment of benefits to an injured employee of a subcontractor may recover the amount of such payments from the subcontractor, plus reasonable attorneys' fee and costs: Provided, however, That if a prime contractor has performed due diligence in all matters requiring the verification of a subcontractor's maintenance of workers' compensation insurance coverage, then the prime contractor is not liable for any claim made hereunder against the subcontractor.

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§23-2-2. Insurance Commissioner to be furnished information by employers, State Tax Commissioner, and WorkForce West Virginia; secrecy of information; examination of employers, etc.; violation a misdemeanor.

(a) Every employer shall furnish the Insurance Commissioner, upon request, all information required by him or her to carry out the purposes of this chapter. Every employer shall have a continuous and ongoing duty to maintain current information about its activities, risks, and rates regarding workers' compensation coverage. The Insurance Commissioner may examine under oath any employer or officer, agent, or employee of any employer.

(b) Notwithstanding the provisions of any other statute to the contrary, specifically, but not exclusively, §11-10-5, §11-10-5b, and §21A-10-11 of this code, the Insurance Commissioner may receive the following information:

(1) Upon written request to the State Tax Commissioner: The names, addresses, places of business, and other identifying information of all businesses receiving a business franchise registration certificate and the dates thereof; and the names and social security numbers or other tax identification numbers of the businesses and of the businesses' workers and employees, if otherwise collected, and the quarterly or other applicable reporting period and annual gross wages or other compensation paid to the workers and employees of businesses reported pursuant to the requirement of withholding of tax on income.

(2) Upon written application to WorkForce West Virginia: In addition to the information that may be released to the Insurance Commissioner for the purposes of this chapter under the provisions of Chapter 21A of this code, the names, addresses, and other identifying information of all employing units filing reports and information pursuant to §21A-10-11 of this code as well as information contained in those reports regarding the number and names, addresses, and social security numbers of employees employed and the gross quarterly or other applicable reporting period wages paid by each employing unit to each identified employee.

(c) All information acquired by the Insurance Commissioner pursuant to §23-2-2(b) of this code shall be used only for the performance of the functions necessary for the regulation of the workers' compensation insurance industry and other duties as set forth in this chapter.

(d) Reasonable costs of compilation and production of any information made available pursuant to §23-2-2(b) of this code shall be charged to the Insurance Commissioner.

(e) Information acquired by the Insurance Commissioner pursuant to §23-2-2(b) of this code is not subject to disclosure under the provisions of Chapter 29B of this code.

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§23-2-3. Report forms and other forms for use of employers.

The Insurance Commissioner shall prepare and furnish report forms for the use of employers subject to this chapter. Every employer receiving from the Insurance Commissioner any form or forms with direction for completion and returning to the Insurance Commissioner shall return the form, within the period fixed by the Insurance Commissioner, completed as to answer fully and correctly all pertinent questions in the form, and if unable to do so, shall give good and sufficient reasons for the failure.

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§23-2-4. Classification of industries; rate of premiums; authority to adopt various systems; accounts.

[Repealed.]

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§23-2-5. Notice to employees.

Upon discovery that an employer is not maintaining West Virginia workers' compensation insurance, the Insurance Commissioner shall issue a written notice to the employees of that employer. Notice to employees provided in this section shall be given by posting written notice that the employer is defaulted under the compensation law of West Virginia and that the defaulted employer is liable to its employees for injury or death, both in Workers' Compensation benefits and in damages at common law or by statute. The notice shall be in the form prescribed by the Insurance Commissioner and shall be posted in a conspicuous place at the chief works of the employer, as it appears in records of the Insurance Commissioner. If the chief works of the employer cannot be found or identified, the notices shall be posted at the front door of the courthouse of the county in which the chief works are located, according to the Insurance Commissioner's records. Any person who shall, prior to the reinstatement of the employer, as provided in this section, or prior to sixty days after the posting of the notice, whichever shall first occur, remove, deface, or render illegible the notice, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined $1,000. The notice shall state this provision upon its face. The Insurance Commissioner may require any sheriff, deputy sheriff, constable, or other official of the State of West Virginia, authorized to serve civil process, to post the notice and to make return thereof of the fact of the posting to the Insurance Commissioner. Any failure of the officer to post any notice within 10 days after he or she has received the notice from the Insurance Commissioner, without just cause or excuse, constitutes a willful failure or refusal to perform a duty required of him or her by law within the meaning of §61-5-28 of this code. Any person actually injured by reason of the failure has an action against the official, and upon any official bond he or she may have given, for the damages as the person may actually have incurred, but not to exceed, in the case of any surety upon the bond, the amount of the penalty of the bond. Any official posting the notice as required in this section is entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the State of West Virginia. The fee shall be paid by the Insurance Commissioner out of any funds at his or her disposal.

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

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(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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§23-2-5b.

Repealed.

Acts, 2003 2nd Ex. Sess., Ch. 27.

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§23-2-5c. Statute of limitations; effective date for new payments; previous payments due not affected.

[Repealed.]

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§23-2-5d. Uncollectible receivables; write-offs.

[Repealed.]

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§23-2-6. Exemption of contributing employers from liability.

Any employer subject to this chapter who procures and continuously maintains workers' compensation insurance as required by this chapter or who elects to make direct payments of compensation as provided in this section is not liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after so subscribing or electing, and during any period in which the employer is not in default and has complied fully with all other provisions of this chapter. Continuation in the service of the employer shall be considered a waiver by the employee and by the parents of any minor employee of the right of action as aforesaid, which the employee or his or her parents would otherwise have: *Provided*, That in case of employers not required by this chapter to procure and maintain workers' compensation insurance, the injured employee has remained in the employer's service with notice that his or her employer has elected to procure and maintain workers' compensation insurance, or has elected to make direct payments as aforesaid.

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§23-2-6a. Exemption from liability of officers, managers, agents, representatives or employees of contributing employers.

The immunity from liability set out in the preceding section shall extend to every officer, manager, agent, representative or employee of such employer when he is acting in furtherance of the employer's business and does not inflict an injury with deliberate intention.

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§23-2-7. Benefits of chapter may not be waived by contract or regulation.

No employer or employee shall exempt himself or herself from the burden or waive the benefits of this chapter by any contract, agreement, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void.

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§23-2-8. Liability of employer for failing to procure or maintain workers' compensation insurance; certain common-law defenses prohibited; exceptions.

All employers who fail to procure and continuously maintain workers' compensation insurance as required by this chapter or who fail to obtain permission to self-insure their workers' compensation risk as permitted by §23-2-9 of this code shall be liable to their employees (within the meaning of this article) for all damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect, or default of the employer or any of the employer's officers, agents, or employees while acting within the scope of their employment and in the course of their employment and also to the personal representatives of such employees where death results from such personal injuries, and in any action by any such employee or personal representative thereof, such defendant shall not avail himself or herself of the following common-law defenses: The defense of the fellow-servant rule; the defense of the assumption of risk; or the defense of contributory negligence; and further shall not avail himself or herself of any defense that the negligence in question was that of someone whose duties are prescribed by statute: *Provided*, That such provision depriving a defendant employer of certain common-law defenses under the circumstances therein set forth shall not apply to an action brought against a county court, Board of Education, municipality, or other political subdivision of the state, or against any employer not required to cover his or her employees under the provisions of this chapter.

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§23-2-9. Election of employer or employers' group to be self-insured and to provide own system of compensation; exceptions; self administration; rules; penalties; regulation of self-insurers.

(a) Notwithstanding any provisions of this chapter to the contrary, the following types of employers or employers' groups may apply for permission to self-insure their workers' compensation risk.

(1) The types of employers are:

(A) Any employer who is of sufficient capability and financial responsibility to ensure the payment to injured employees and the dependents of fatally injured employees of benefits provided in this chapter at least equal in value to the compensation provided for in this chapter;

(B) Any employer or group of employers as provided in §23-2-9(a)(1)(A) of this code of such capability and financial responsibility that maintains its own benefit fund or system of compensation to which its employees are not required or permitted to contribute and whose benefits are at least equal in value to those provided in this chapter; or

(C) Any employer who is signatory to a collective bargaining agreement that allows for participation in a group workers' compensation insurance program may join with any other employer or employers that are signatory to a collective bargaining agreement or agreements that allow for participation in a group workers' compensation program and jointly apply to the Insurance Commissioner to collectively self-insure their obligations under this chapter. The employers must collectively meet the conditions set forth in §23-2-9(a)(1)(A) and (B) of this code. There shall be joint and several liability for all employers who choose to jointly self-insure under the provisions of this article.

(2) In order to be approved for self-insurance status, the employer shall:

(A) Submit all information requested by the Insurance Commissioner;

(B) Provide security or bond, in an amount and form determined by the Insurance Commissioner, which shall balance the employer's financial condition based upon an analysis of its audited financial statements and the full accrued value of current liability for future claim payments based upon generally accepted actuarial and accounting principles of the employer's existing and expected liability;

(C) Meet the financial responsibility requirements set forth in rules promulgated by the industrial council;

(D) Obtain and maintain a policy of excess insurance if required to do so by the Insurance Commissioner; and

(E) Have an effective health and safety program at its workplaces.

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(3) Upon a finding that the employer has met all of the requirements of this section and any rules promulgated thereunder, the employer may be permitted self-insurance status. An annual review of each self-insurer's continuing ability to meet its obligations and the requirements of this section shall be made by the Insurance Commissioner. At the time of such review, the Insurance Commissioner may require that the self-insured employer post a bond or security or obtain and maintain an excess insurance policy. This review shall also include a recalculation of the amount of any security, bond, or policy of excess insurance previously required to be posted or obtained under any provision of this chapter or any rules promulgated thereunder. Failure to provide the required amount or form of security or bond or to obtain or maintain the required excess insurance policy may cause the employer's self-insurance status to be terminated by the Insurance Commissioner.

(4) Whenever a self-insured employer furnishes security or bond, including replacement and amended bonds and other securities, as surety to ensure the employer's or guarantor's payment of all obligations under this chapter for which the security or bond was furnished, the security or bond shall be in the most current form or forms approved and authorized by the Insurance Commissioner for use by the employer or its guarantors, surety companies, banks, financial institutions, or others in its behalf for that purpose.

(b)(1) Notwithstanding any provision in this chapter to the contrary, self-insured employers shall, effective July 1, 2004, administer their own claims. The Insurance Commissioner shall, pursuant to rules promulgated by the industrial council, regulate the administration of claims by employers granted permission to self-insure their obligations under this chapter. A self-insured employer shall comply with rules promulgated by the industrial council governing the self-administration of its claims.

(2) An employer or employers' group that self-insures its risk and self-administers its claims shall exercise all authority and responsibility granted to the Insurance Commissioner or private carriers in this chapter and provide notices of action taken to effect the purposes of this chapter to provide benefits to persons who have suffered injuries or diseases covered by this chapter. An employer or employers' group granted permission to self-insure and self-administer its obligations under this chapter shall at all times be bound and shall comply fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in §23-4-1 *et seq*. of this code pertaining to disability and death benefits are binding on and shall be strictly adhered to by the self-insured employer in its administration of claims presented by employees of the self-insured employer. Violations of the provisions of this chapter and such rules relating to this chapter as may be approved by the industrial council may constitute sufficient grounds for the termination of the authority for any employer to self-insure its obligations under this chapter.

(c) Each self-insured employer shall, on or before the last day of the first month of each quarter or other assigned reporting period, file with the Insurance Commissioner a certified statement of the total gross wages and earnings of all of the employer's employees subject to this chapter for the preceding quarter or other assigned reporting period.

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(d)(1) If a self-insured employer defaults in the payment of any portion of surcharges or assessments required under this chapter or rules promulgated thereunder, or in any payment required to be made as benefits provided by this chapter to the employer's injured employees or dependents of fatally injured employees, the Insurance Commissioner shall, in an appropriate case, determine the full accrued value based upon generally accepted actuarial and accounting principles of the employer's liability, including the costs of all awarded claims and of all incurred but not reported claims. The amount determined may, in an appropriate case, be assessed against the employer. The Insurance Commissioner may demand and collect the present value of the defaulted liability. Interest shall accrue upon the demanded amount as provided in §23-2-13 of this code until the liability is fully paid. Payment of all amounts then due to the Insurance Commissioner and to the employer's employees is a sufficient basis for reinstating the employer to good standing with the Insurance Commissioner and removing the employer from default status.

(2) The assessments and surcharges required to be paid by self-insured employers pursuant to the provisions of this chapter and the rules promulgated thereunder are special revenue taxes under and according to the provisions of state workers' compensation law and are considered to be tax claims, as priority claims or administrative expense claims according to those provisions under the law provided in the United States bankruptcy code, Title 11 of the United States Code. In addition, as the same was previously intended by the prior provisions of this section, this amendment and reenactment is for the purpose of clarification of the taxing authority of the Insurance Commissioner.

(e) Any self-insured employer which has had a period of inactivity due to the nonemployment of employees which results in its reporting of no wages on reports to the Insurance Commissioner for a period of four or more consecutive quarters may have its status inactivated and shall apply for reactivation to status as a self-insured employer prior to its reemployment of employees. Despite the inactivation, the self-insured employer shall continue to make payments on all awards for which it is responsible. Upon application for reactivation of its status as an operating self-insured employer, the employer shall document that it meets the eligibility requirements needed to maintain self-insured employer status under this section and any rules adopted to implement it. If the employer is unable to requalify and obtain approval for reactivation, the employer shall, effective with the date of employment of any employee, purchase workers' compensation insurance as provided in §23-2C-1 *et seq*. of this code, but shall continue to be a self-insurer as to the prior period of active status and to furnish security or bond and meet its prior self-insurance obligations.

(f) Self-insured employers may withdraw from self-insured status and purchase workers' compensation insurance as provided in §23-2C-1 *et seq*. of this code, but said self-insured employers shall remain liable for their self-insured employer claims liabilities for each claim with a date of injury or last exposure prior to the effective date of insurance coverage.

(g) Any employer subject to this chapter, who elects to carry the employer's own risk by being a self-insured employer and who has complied with the requirements of this section and of any applicable rules, shall not be liable to respond in damages at common law or by

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statute for the injury or death of any employee, however occurring, after the election's approval and during the period that the employer is allowed to carry the employer's own risk.

(h) An employer may not hire any person or group to self-administer claims under this chapter as a third-party administrator unless the person or group has been determined to be qualified to be a third-party administrator by the Insurance Commissioner pursuant to rules adopted by the industrial council. Any person or group whose status as a third-party administrator has been revoked, suspended, or terminated by the Insurance Commissioner shall immediately cease administration of claims and shall not administer claims unless subsequently authorized by the Insurance Commissioner.

WV Legislature

§23-2-9a. Sanctions for default by self-insured employers; rulemaking authority.

Whenever the authority of an employer to self-insure its obligations under this chapter is terminated and such employer is thereafter in default in the payment of any portion of surcharges or assessments required under this chapter or by rules promulgated thereunder, or in any payment required to be made as benefits provided by this chapter to the employer's injured employees or dependents of fatally injured employees, such employer shall be ineligible for government contracts to the same extent as an employer in "employer default," as provided for in section ten-a, article three, chapter five-a of this code, and shall also be subject to the license and permit revocation and termination sanctions to the same extent as employers in "employer default" pursuant to the provisions of subdivision (1), subsection (e), section nineteen, article two-c of this chapter. The Insurance Commissioner shall propose rules, as provided in section five, article two-c of this chapter, establishing administrative penalties for nonpayment of obligations under this chapter.

WV Legislature

§23-2-10. Application of chapter to interstate commerce.

(a) In case any employer within the meaning of this chapter is also engaged in interstate or foreign commerce, and for whom a rule of liability or method of compensation has been established by the Congress of the United States, this chapter applies to him or her only to the extent that his or her mutual connection with work in this state is clearly separable and distinguishable from his or her interstate work, and to the extent that the work in this state is clearly separable and distinguishable from his or her interstate work, the employer is subject to the terms and provisions of this chapter in like manner as all other employers under this chapter. Payments of premiums shall be on the basis of the payroll of those employees who perform work in this state only.

(b) Unless and until the Congress of the United States has by appropriate legislation established a rule of liability or method of compensation governing employers and employees engaged in commerce within the purview of the commerce clause of the United States Constitution (article I, section 8), section one of this article applies without regard to the interstate or intrastate character or nature of the work or business engaged in.

WV Legislature

§23-2-11. Partial invalidity of chapter.

If any provision of this chapter or the application of such provision to any circumstance is held to be unconstitutional or otherwise invalid, the remainder of this chapter or the application of the provisions to other circumstances shall not be affected thereby. The Legislature hereby declares that it would have passed the remainder of this chapter if it had known that such provision, or its application to any circumstances, would be declared unconstitutional or otherwise invalid.

WV Legislature

§23-2-12. Effect of repeal or invalidity of chapter on action for damages.

If the provisions of this chapter relating to compensation for injuries to, or death of, workers are repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of any injury or death and the repeal, or the final adjudication of invalidity or unconstitutionality, shall not be computed as a part of the time limited by law for the commencement of any action relating to the injuries or death, but the amount of any compensation which may have been paid on account of injury or death shall be deducted from any judgment for damages recovered on account of the injury or death.

WV Legislature

§23-2-13. Interest.

The interest due on payments pursuant to §23-2-9(d)(1) and §23-2C-8(d)(1) of this code shall be the prime rate plus four percent rounded to the nearest whole percent. The prime rate shall be the rate published in the Wall Street Journal on the last business day of the prior fiscal year reflecting the base rate on corporate loans posted by at least 75 percent of the nation's 30 largest banks: *Provided*, That in no event shall the rate of interest charged to a political subdivision of the state or a volunteer fire department exceed 10 percent per annum.

WV Legislature

§23-2-14. Sale or transfer of business; attachment of lien for premium, etc.; payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien; successor liability.

[Repealed.]

WV Legislature

§23-2-15. Liabilities of successor employer; waiver of payment by commission; assignment of predecessor employer's premium rate to successor.

[Repealed.]

WV Legislature

§23-2-16. Acceptance or assignment of premium rate.

[Repealed.]

WV Legislature

§23-2-17. Employer right to hearing; content of petition; appeal.

Notwithstanding any provision in this chapter to the contrary and notwithstanding any provision in §29A-5-5 of this code to the contrary, in any situation where an employer objects to a decision or action of the Insurance Commissioner, the employer is entitled to file a written demand for hearing upon the decision or action in accordance with §33-2-13 of this code. The written demand must be filed within 30 days of the employer's receipt of notice of the disputed Insurance Commissioner's decision or action or, in the absence of such receipt, within 60 days of the date of the decision, the time limitations being hereby declared to be a condition of the right to litigate the decision or action and therefore jurisdictional.

The employer's written demand shall clearly identify the decision or action disputed and the bases upon which the employer disputes the decision or action. Upon receipt of a written demand, the Insurance Commissioner shall schedule a hearing which shall be conducted in accordance with the provisions of §29A-5-1 *et seq*. and §33-2-13 of this code. An appeal from a final decision of the Insurance Commissioner shall be taken in accord with the provisions of §33-2-13 of this code.

WV Legislature

§23-2-18.

Repealed.

Acts, 1995 Reg. Sess., Ch. 253.

WV Legislature