

# WEST VIRGINIA CODE: §23-2C-5

## §23-2C-5. Creation of the industrial council; duties.

(a) There is hereby created within the office of the Insurance Commissioner an industrial council.

(b) On or before July 1, 2005, the Governor with the advice and consent of the Senate, shall appoint five voting members to the industrial council who meet the requirements and qualifications prescribed in this subsection. Two members of the West Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory nonvoting members of the board. The Governor shall appoint the legislative members to the board. No more than three of the legislative members may be of the same political party. The Insurance Commissioner shall serve as an advisory nonvoting member of the board.

(1) (A) Five members shall be appointed by the Governor with the advice and consent of the Senate for terms that begin upon appointment after the effective date of this legislation and expire as follows:

(i) One member shall be appointed for a term ending June 30, 2007;

(ii) Two members shall be appointed for a term ending June 30, 2008; and

(iii) Two members shall be appointed for a term ending June 30, 2009.

(B) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending June 30 of the fourth year following the year the preceding term expired. In the event a vacancy occurs, it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the council may be removed from office by the Governor except for official misconduct, incompetency, neglect of duty or gross immorality.

(C) No appointed member may be a candidate for or hold elected office. Members may be reappointed for no more than two full terms.

(2) Each of the appointed voting members of the council shall be appointed based upon his or her demonstrated knowledge and experience to effectively accomplish the purposes of this chapter. They shall meet the minimum qualifications as follows:

(A) Each shall hold a baccalaureate degree from an accredited college or university: Provided, That no more than one of the appointed voting members may serve without a baccalaureate degree from an accredited college or university if the member has a minimum of fifteen years' experience in his or her field of expertise as required in this subdivision;

(B) Each shall have a minimum of ten years' experience in his or her field of expertise. The

Governor shall consider the following guidelines when determining whether potential candidates meet the qualifications of this subsection: Expertise in insurance claims management; expertise in insurance underwriting; expertise in the financial management of pensions or insurance plans; expertise as a trustee of pension or trust funds of more than two hundred beneficiaries or \$300 million; expertise in workers' compensation management; expertise in loss prevention and rehabilitation; expertise in occupational medicine demonstrated by licensure as a medical doctor in West Virginia and experience, board certification or university affiliation; or expertise in similar areas of endeavor;

(C) At least one shall be a certified public accountant with financial management or pension or insurance audit expertise; at least one shall be an attorney with financial management experience; one shall be an academician holding an advanced degree from an accredited college or university in business, finance, insurance or economics; and one shall represent organized labor.

(D) The council shall appoint one member to serve as chairperson. The chairperson shall serve for a one-year term and may serve more than one consecutive term. The council shall hold meetings at the request of the chairperson or at the request of at least three of the members of the council, but no less frequently than once every three months. The chairperson shall determine the date and time of each meeting. Three members of the council constitute a quorum for the conduct of the business of the council. No vacancy in the membership of the council shall impair the right of a quorum to exercise all the rights and perform all the duties of the council. No action shall be taken by the council except upon the affirmative vote of three members of the council.

(3) (A) Each voting appointed member of the council shall receive compensation of not more than \$350 per day for each day during which he or she is required to and does attend a meeting of the board.

(B) Each voting appointed member of the council is entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the Department of Administration.

(C) Each member of the council shall be provided appropriate liability insurance, including, but not limited to, errors and omissions coverage, without additional premium, by the state Board of Risk and Insurance Management established pursuant to article twelve, chapter twenty-nine of this code.

(c) The industrial council shall:

(1) In consultation with the Insurance Commissioner, establish operating guidelines and policies designed to ensure the effective administration of the workers' compensation insurance market in West Virginia.

(2) Review and approve, reject or modify rules that are proposed by the Insurance Commissioner for operation and regulation of the workers' compensation insurance market before the rules are filed with the Secretary of State. The rules adopted by the industrial council are not subject to sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The industrial council shall follow the remaining provisions of said chapter for giving notice to the public of its actions and for holding hearings and receiving public comments on the rules.

(3) In accordance with the laws and rules of West Virginia, establish and monitor performance standards and measurements to ensure the timeliness and accuracy of activities performed under chapter twenty-three of this code and applicable rules.

(4) Submit for approval by the Legislature, as an isolated and clearly discernable component of the Insurance Commissioner's budget, a budget for the sufficient administrative resources and funding requirements necessary for their duties under this article.

(5) Perform all record and information gathering functions necessary to carry out its duties under this code.

(6) Every two years, conduct an overview of the safety initiatives currently being utilized or which could be utilized in the workers' compensation insurance market and report said finding to the Joint Committee on Government and Finance. Each private carrier and self-insured employer shall cooperate with the council in the performance of its duties to evaluate insurer services provided to employers in controlling losses and providing information on the prevention of industrial accidents or occupational diseases. Each employer, private carrier and self-insured employer shall provide to the council, upon request, any information, statistics or data in its records requested by the council in the performance of these duties.

(7) Perform all other duties as specifically provided in this chapter for the industrial council and those duties incidental thereto.

(8) Establish a method of indexing claims of injured workers that will make information concerning the injured workers of one insurer available to other insurers.

(A) Every insurer shall provide information, as required by the industrial council, for establishing and maintaining the claims index.

(B) If an employee files a claim with an insurer, the insurer is entitled to receive from the administrator a list of the prior claims of the employee. If the insurer desires to inspect the files related to the prior claims, he or she must obtain the written consent of the employee or the Insurance Commissioner or his or her designee. The use of the information contained in the files is limited to the administration of the claim.