WEST VIRGINIA CODE: §33-2-22

§33-2-22. Authority of Insurance Commissioner regarding employers in default to workers' compensation funds; injunctions against defaulting employers.

(a) Upon termination of the Workers' Compensation Commission, all of the powers and authority previously conferred upon the Workers' Compensation Commission pursuant to article two, chapter twenty-three of this code, relating to employers in default to the Workers' Compensation Fund, are hereby transferred to the Insurance Commissioner and shall be applied by the commissioner to those employers in default to the Old Fund or having liability to the Uninsured Employer Fund or who are in policy default or fail to maintain mandatory workers' compensation coverage, all as defined in article two-c, chapter twenty-three of this code.

(b) In any case in which an employer is in default to the Old Fund or has liability to the Uninsured Employer Fund or who is in default on a policy or otherwise fails to maintain mandatory workers' compensation coverage, all as defined in article two-c, chapter twenty-three of this code, the commission may bring an action in the circuit court of Kanawha County to enjoin the employer from continuing to operate the employer's business: Provided, That the commissioner may, in his or her sole discretion, and as an alternative to this action pursuant to this subsection, require the employer to file a bond, in the form prescribed by the commissioner, with satisfactory surety in an amount not less than one hundred fifty percent of the total payments, interest and penalties due.

(c) In any action instituted pursuant to subsection (b) of this section, the circuit court shall issue an injunction prohibiting the employer from operating the employer's business if the Insurance Commissioner proves by a preponderance of the evidence, that the employer is in default to the Old Fund or has liability to the uninsured fund or is in policy default or has otherwise failed to maintain mandatory workers' compensation coverage.

(d) Notwithstanding any provision of this code to the contrary, the commissioner shall have the authority to waive penalty and interest accrued on moneys due the Old Fund. The enactment of the provisions of this subsection shall be applied retrospectively to January 1, 2006, and may not be construed to require the commissioner to adjust or otherwise modify any agreements reached with regard to the payment of penalty or interest since that date.

(e) Notwithstanding any provision of this code to the contrary, the Insurance Commissioner may compromise and settle any claims for moneys due to the Old Fund or the Uninsured Employer Fund. Information regarding settlements is subject to chapter twenty-nine-b of this code. The commissioner shall submit to the President of the Senate, the Speaker of the House of Delegates and the Legislative Auditor an annual report summarizing the settlements into which he or she has entered pursuant to this subsection. The summary shall describe the parties involved, the total amount owed and portions paid, and the terms of the settlement.

WV Legislature