

# WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 4296

BY DELEGATE WESTFALL

[Passed March 10, 2022; in effect ninety days from passage.]

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1 AN ACT to repeal §23-1-1c, §23-1-1d, §23-1-1e, §23-1-1g, §23-1-3, §23-1-4a, §23-1-6, §23-1-7,  
2 and §23-1-20 of the Code of West Virginia, 1931, as amended; to repeal §23-2-1b, §23-  
3 2-4, §23-2-5c, §23-2-5d, §23-2-14, §23-2-15, and §23-2-16 of said code; to repeal §23-  
4 2B-1, §23-2B-2, and §23-2B-3 of said code; to repeal §23-2C-3a, §23-2C-4, §23-2C-11,  
5 §23-2C-13, §23-2C-14, §23-2C-23, and §23-2C-24 of said code; to repeal §23-2D-1, §23-  
6 2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-  
7 2D-9, and §23-2D-10 of said code; to repeal §23-3-1, §23-3-1a, §23-3-2, §23-3-3, §23-3-  
8 4, §23-3-5, and §23-3-6 of said code; to repeal §23-4A-2, §23-4A-3, §23-4A-4, §23-4A-5,  
9 §23-4A-6, §23-4A-8, and §23-4A-9 of said code; to repeal §23-4B-6, §23-4B-8, §23-4B-  
10 8a, and §23-4B-8b of said code; to repeal §23-4C-1, §23-4C-2, §23-4C-3, §23-4C-4, §23-  
11 4C-5, and §23-4C-6 of said code; to amend and reenact §23-1-1, §23-1-1b, §23-1-1f, §23-  
12 1-2, §23-1-4, §23-1-5, §23-1-8, §23-1-9, §23-1-10, §23-1-11, §23-1-12, §23-1-13, §23-1-  
13 14, §23-1-15, §23-1-18, and §23-1-19 of said code; to amend said code by adding thereto  
14 a new section, designated §23-1-21; to amend and reenact §23-2-1, §23-2-1c, §23-2-1d,  
15 §23-2-2, §23-2-3, §23-2-5, §23-2-5a, §23-2-6, §23-2-7, §23-2-8, §23-2-9, §23-2-11, §23-  
16 2-13, and §23-2-17 of said code; to amend and reenact §23-2A-1 of said code; to amend  
17 and reenact §23-2C-1, §23-2C-2, §23-2C-3, §23-2C-6, §23-2C-7, §23-2C-8, §23-2C-12,  
18 §23-2C-15, §23-2C-16, §23-2C-18, §23-2C-19, §23-2C-20, and §23-2C-21 of said code;  
19 to amend and reenact §23-4A-1 of said code; and to amend and reenact §23-4B-2, §23-  
20 4B-4, §23-4B-5, §23-4B-7, and §23-4B-9 of said code, all relating to modernizing and  
21 updating workers' compensation statutes; removing or revising provisions made obsolete  
22 by legislation and regulatory revisions in 2005 and 2006; standardizing references to  
23 public offices or agencies; updating statutory citations; and making spelling and  
24 grammatical changes throughout.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.**

**§23-1-1. Regulation of the workers' compensation system by the Insurance Commissioner; findings.**

1 (a) As recognized by the Supreme Court of Appeals of West Virginia in Wampler Foods,  
2 Inc. v. Workers' Compensation Division, 216 W.Va. 129, 602 S.E.2d 805 (2004), and in  
3 recognition that a deficit of such critical proportions existed in the workers' compensation fund  
4 that it constituted an immediate and long term threat to the solvency of the fund, as well as a  
5 substantial deterrent to the economic development of this state, and further that lawmakers are  
6 uniquely charged with the responsibility for passing laws designed to cure such serious concerns  
7 and that substantial deference is accorded to legislative actions aimed at doing so, it was and  
8 remains the intent of the Legislature that the amendments to this chapter enacted in the year 2003  
9 be applied from the date upon which the enactment was made effective by the Legislature.

10 (b) It is the further intent of the Legislature that this chapter be interpreted so as to assure  
11 the quick and efficient delivery of indemnity and medical benefits to injured workers at a  
12 reasonable cost to the employers who are subject to the provisions of this chapter. It is the specific  
13 intent of the Legislature that workers' compensation cases shall be decided on their merits and  
14 that a rule of "liberal construction" based on any "remedial" basis of workers' compensation  
15 legislation shall not affect the weighing of evidence in resolving such cases. The workers'  
16 compensation system in this state is based on a mutual renunciation of common law rights and  
17 defenses by employers and employees alike. Employees' rights to sue for damages over and  
18 above medical and health care benefits and wage loss benefits are to a certain degree limited by  
19 the provisions of this chapter and employers' rights to raise common law defenses, such as lack  
20 of negligence, contributory negligence on the part of the employee, and others, are curtailed as  
21 well. Accordingly, the Legislature hereby declares that any remedial component of the workers'  
22 compensation laws is not to cause the workers' compensation laws to receive liberal construction  
23 that alters in any way the proper weighing of evidence as required by §23-4-1g of this code.

(c) It is the intent of the Legislature, expressed through its enactment of legislation, to transfer the regulation of the workers' compensation system to the Insurance Commissioner. By proclamation of the Governor, as authorized by §23-2C-1 *et seq.* of this code, the Workers' Compensation Commission was terminated on December 31, 2005. To further the transition from the state-operated workers' compensation system to a system of private insurance, the duties and responsibilities of the Workers' Compensation Commission and the board of managers, including, but not limited to, ratemaking and adjudication of claims now reside with the Insurance Commissioner.

**§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;

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

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

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

31           (9) Propose rules for approval by the Industrial Council created in §23-2C-5 of this code,  
32 under which agencies of this state shall revoke or refuse to grant, issue, or renew any contract,  
33 license, permit, certificate, or other authority to conduct a trade, profession, or business to or with  
34 any employing unit who is in default as set forth in §23-2C-19(d)(1) of this code or listed in the  
35 Employer Violator System with the Insurance Commissioner. The term "agency" includes any unit  
36 of state government such as officers, agencies, divisions, departments, boards, commissions,  
37 authorities, or public corporations. An employing unit is not in default if it has entered into a  
38 repayment agreement with the Insurance Commissioner and remains in compliance with its  
39 obligations under the repayment agreements;

40           (A) The rules shall provide that, before granting, issuing, or renewing any contract, license,  
41 permit, certificate, or other authority to conduct a trade, profession, or business to or with any  
42 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.

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

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

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

80           (ii) The fraud unit, in cases of criminal fraud, has the authority to review and prosecute  
81 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  
82 code, as well as any other criminal statutes that may be applicable. In addition, the fraud unit not  
83 only has the authority to prosecute and refer cases involving criminal fraud to appropriate state  
84 authorities for prosecution, but it also has the authority, and is encouraged, to cooperate with the  
85 appropriate federal authorities for review and possible prosecution, by either state or federal  
86 agencies, of cases involving criminal fraud concerning the Workers' Compensation System in  
87 West Virginia; and

88           (iii) The fraud unit is expressly authorized to initiate investigations and participate in the  
89 development of, and if necessary, the prosecution of any health care provider, including a provider  
90 of rehabilitation services and in-home caretaker, alleged to have violated the provisions of §23-4-  
91 3c of this code;

92           (C) Specific personnel, designated by the inspector general, shall be permitted to operate  
93 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;

(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

120 moneys owed to the Insurance Commissioner or has entered into and remains in compliance with  
121 a repayment agreement;

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

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

**§23-1-1c. Payment withholding; interception; penalty.**

1 [Repealed.]

**§23-1-1d. Rules of former division of workers' compensation.**

1 [Repealed.]

**§23-1-1e. Transfer of assets and contracts; ability to acquire, own, lease and otherwise  
manage property.**

1 [Repealed.]

**§23-1-1f. Authority of Insurance Commission to exempt employees from classified service;  
exemption from purchasing rules.**

1 Notwithstanding any other provision of this code, the Insurance Commissioner may:

2 (1) Exempt no more than 20 positions of the offices of the Insurance Commissioner from  
3 the classified service of the state, the employees of which positions shall serve at the will and  
4 pleasure of the commissioner: *Provided*, That such exempt positions shall be in addition to those  
5 positions in classified-exempt service under the classification plan adopted by the Division of  
6 Personnel; and

7 (2) Expend such sums for professional services as he or she determines are necessary  
8 to perform duties under this chapter. The provisions of §5A-3-1 *et seq.* of this code relating to the  
9 Purchasing Division of the Department of Administration shall not apply to these contracts, and  
10 the Insurance Commissioner shall award the contract or contracts on a competitive basis.

**§23-1-1g. Legislative intent to create a quasi-public entity.**

1 [Repealed.]

**§23-1-2. Oversight of the workers' compensation commission.**

1 The Insurance Commissioner shall report at least quarterly to the Joint Committee on  
2 Government and Finance regarding the funds created in §23-2C-1 *et seq.* of this code. This  
3 analysis shall include the current balances in the fund and revenue generated and expended in  
4 relationship to the liabilities and assets of the funds and estimates of any debt reduction relative  
5 to the fund over the next reporting period.

**§23-1-3. Payment of salaries and expenses generally; manner; limitation.**

1 [Repealed.]

**§23-1-4. Records; confidentiality; exceptions.**

1 Except as expressly provided for in this subsection, information obtained regarding  
2 employers and claimants pursuant to this chapter for the purposes of its administration is not  
3 subject to the provisions of chapter 29B of this code unless the provisions are hereafter  
4 specifically made applicable, in whole or in part. The information that is reasonably necessary  
5 may be released in formal orders or opinions of any tribunal or court which is presented with an  
6 issue arising under this chapter as well as in the presentations of the parties before the tribunal  
7 or court. Similarly, claimants or other interested parties to an issue arising under this chapter may,  
8 upon request, obtain information from the Insurance Commissioner's records to the extent  
9 necessary for the proper presentation or defense of a claim or other matter. Information may be  
10 released pursuant to the provisions of chapter 29B of this code only if all identifying information  
11 has first been eliminated from the records. Nothing in this subsection shall prevent the release of  
12 information to another agency of the state or of the federal government for the legitimate purposes  
13 of those agencies: *Provided*, That the agency shall guarantee the confidentiality of the information  
14 provided to the fullest extent possible in keeping with its own statutory and regulatory mandates.  
15 Nothing in this section shall prevent the Insurance Commissioner from complying with any

16 subpoena duces tecum: *Provided, however,* That the issuing tribunal or court shall take such  
17 actions as proper to maintain the confidentiality of the information.

18 The Insurance Commissioner may release, pursuant to a proper request under the  
19 provisions of chapter 29B of this code, the following information:

20 (1) Whether or not a specific employer has obtained coverage under the provisions of this  
21 chapter;

22 (2) Whether or not a specific employer is in good standing or is delinquent or in default  
23 according to the Insurance Commissioner's records and the time periods thereof; and

24 (3) If a specific employer is delinquent or in default, what the payments due the Insurance  
25 Commissioner are and what the components of that payment are, including the time periods  
26 affected.

**§23-1-4a. Bond for executive director and associate director.**

1 [Repealed.]

**§23-1-5. Office of Insurance Commissioner; hearings.**

1 The Insurance Commissioner shall keep and maintain his or her office at the seat of  
2 government and shall provide a suitable room or rooms, necessary office furniture, supplies,  
3 books, periodicals, maps, and other equipment. After due notice, showing the time and place, the  
4 Insurance Commissioner may hold hearings anywhere within the state, or elsewhere by  
5 agreement of claimant and employer, with the approval of the Insurance Commissioner.

**§23-1-6. Employment of associate director and other assistants; compensation and travel expenses.**

1 [Repealed.]

**§23-1-7. Associate director to act during executive director's absence or inability to act and in case of vacancy; bond of associate director.**

1 [Repealed.]

**§23-1-8. Authority of Insurance Commissioner and employees as to oaths and evidence.**

1           The Insurance Commissioner and other employees appointed by the Insurance  
2 Commissioner may, for the purpose contemplated by this chapter, administer oaths, certify official  
3 acts, take depositions, issue subpoenas, and compel the attendance of witnesses and the  
4 production of pertinent books, accounts, papers, records, documents, and testimony.

**§23-1-9. Compelling compliance with order or subpoena.**

1           In case of failure or refusal of any person to comply with the order of the Insurance  
2 Commissioner, or subpoena issued by him or her, or duly appointed employee, or on the refusal  
3 of a witness to testify to any matter regarding which he or she may be lawfully interrogated, or  
4 refusal to permit an inspection as aforesaid, the circuit judge of the county in which the person  
5 resides, on application of the Insurance Commissioner or any duly appointed employee, shall  
6 compel obedience by attachment proceedings as for contempt, as in the case of disobedience of  
7 the requirements of a subpoena issued from the court on a refusal to testify in the court.

**§23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.**

1           Each officer who serves subpoenas on behalf of the Insurance Commissioner shall  
2 receive the same fee as a sheriff and each witness who appears in obedience to a subpoena  
3 before the Insurance Commissioner or duly appointed employee shall receive for his or her  
4 attendance the fees and mileage provided for witnesses in civil cases in the circuit court if the  
5 witness was subpoenaed without the request of either claimant or employer at the instance of the  
6 Insurance Commissioner or duly appointed employee. The witness fees and mileage of any  
7 witness subpoenaed by, or at the instance of, either claimant or employer shall be paid by the  
8 party who subpoenas the witness.

**§23-1-11. Depositions; investigations.**

1           (a) In an investigation into any matter arising under this chapter, the Insurance  
2 Commissioner may cause depositions of witnesses residing within or without the state to be taken  
3 in the manner prescribed by law for like depositions in the circuit court, but the depositions shall

4 be upon reasonable notice to claimant and employer or other affected persons or their respective  
5 attorneys.

6 (b) The Insurance Commissioner also has discretion to accept and consider depositions  
7 taken within or without the state by either the claimant or employer or other affected person,  
8 provided due and reasonable notice of the taking of the depositions was given to the other parties  
9 or their attorneys, if any: *Provided*, That the Insurance Commissioner, upon due notice to the  
10 parties, has authority to refuse or permit the taking of depositions or to reject the depositions after  
11 they are taken, if they were taken at a place or under circumstances which imposed an undue  
12 burden or hardship upon the other parties. The Insurance Commissioner's discretion to accept,  
13 refuse to approve or reject the depositions is binding in the absence of abuse of the discretion.

**§23-1-12. Copies of proceedings as evidence.**

1 A transcribed copy of the evidence and proceedings, or any specific part thereof, on any  
2 investigation or hearing, taken by a stenographer appointed by the Insurance Commissioner and  
3 certified and sworn to by the stenographer to be a true and correct transcript of the testimony in  
4 the investigation or hearing, or of a particular witness, or of a specific part thereof, or to be a  
5 correct transcript of the proceedings had on the investigation or hearing purporting to be taken  
6 and subscribed, may be received in evidence by the Insurance Commissioner with the same  
7 effect as if the stenographer were present and testified to the facts certified. A copy of the  
8 transcript shall be furnished on demand to any party upon payment of the fee prescribed in the  
9 rules and policies of the Insurance Commissioner. The fee shall not exceed that prescribed for  
10 transcripts in the circuit court.

**§23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings;  
withholding of psychiatric and psychological reports and providing summaries  
thereof.**

1 (a) The Insurance Commissioner shall adopt reasonable and proper rules of procedure,  
2 regulate and provide for the kind and character of notices, and the service of the notices, in cases

3 of accident and injury to employees, the nature and extent of the proofs and evidence, the method  
4 of taking and furnishing of evidence to establish the rights to benefits or compensation from the  
5 fund hereinafter provided for, or directly from employers as hereinafter provided, as the case may  
6 require, and the method of making investigations, physical examinations and inspections and  
7 prescribe the time within which adjudications and awards shall be made.

8 (b) At hearings and other proceedings before the Insurance Commissioner or before the  
9 duly authorized representative of the Insurance Commissioner, an employer who is a natural  
10 person may appear, and a claimant may appear, only as follows:

11 (1) By an attorney duly licensed and admitted to the practice of law in this state;

12 (2) By a nonresident attorney duly licensed and admitted to practice before a court of  
13 record of general jurisdiction in another state or country or in the District of Columbia who has  
14 complied with the provisions of rule 8.0 - admission pro hac vice, West Virginia Supreme Court  
15 Rules for admission to the practice of law, as amended;

16 (3) By a representative from a labor organization who has been recognized by the  
17 Insurance Commissioner as being qualified to represent a claimant or who is an individual  
18 otherwise found to be qualified by the Insurance Commissioner to act as a representative. The  
19 representative shall participate in the presentation of facts, figures, and factual conclusions as  
20 distinguished from the presentation of legal conclusions in respect to the facts and figures; or

21 (4) Pro se.

22 (c) At hearings and other proceedings before the Insurance Commissioner or before the  
23 duly authorized representative of the Insurance Commissioner, an employer who is not a natural  
24 person may appear only as follows:

25 (1) By an attorney duly licensed and admitted to the practice of law in this state;

26 (2) By a nonresident attorney duly licensed and admitted to practice before a court of  
27 record of general jurisdiction in another state or country or in the District of Columbia who has

28 complied with the provisions of rule 8.0 - admission pro hac vice, West Virginia Supreme Court  
29 Rules for admission to the practice of law, as amended;

30 (3) By a member of the board of directors of a corporation or by an officer of the corporation  
31 for purposes of representing the interest of the corporation in the presentation of facts, figures,  
32 and factual conclusions as distinguished from the presentation of legal conclusions in respect to  
33 the facts and figures; or

34 (4) By a representative from an employer service company who has been recognized by  
35 the Insurance Commissioner as being qualified to represent an employer or who is an individual  
36 otherwise found to be qualified by the Insurance Commissioner to act as a representative. The  
37 representative shall participate in the presentation of facts, figures, and factual conclusions as  
38 distinguished from the presentation of legal conclusions in respect to the facts and figures.

39 (d) The Insurance Commissioner or his or her representative may require an individual  
40 appearing on behalf of a natural person or corporation to produce satisfactory evidence that he  
41 or she is properly qualified and authorized to appear pursuant to this section.

42 (e) The provisions of §23-1-13(b), (c), and (d) of this code shall not be construed as being  
43 applicable to proceedings before the office of judges or board of review pursuant to the provisions  
44 of §23-5-1 *et seq.* of this code.

45 (f) At the direction of a treating or evaluating psychiatrist or clinical doctoral-level  
46 psychologist, a psychiatric or psychological report concerning a claimant who is receiving  
47 treatment or is being evaluated for psychiatric or psychological problems may be withheld from  
48 the claimant. In that event, a summary of the report shall be compiled by the reporting psychiatrist  
49 or clinical doctoral-level psychologist. The summary shall be provided to the claimant upon his or  
50 her request. Any representative or attorney of the claimant must agree to provide the claimant  
51 with only the summary before the full report is provided to the representative or attorney for his or  
52 her use in preparing the claimant's case. The report shall only be withheld from the claimant in  
53 those instances where the treating or evaluating psychiatrist or clinical doctoral-level psychologist



certifies that exposure to the contents of the full report is likely to cause serious harm to the claimant or is likely to cause the claimant to pose a serious threat of harm to a third party.

(g) In any matter arising under §23-1-1 *et seq.*, §23-2-1 *et seq.*, §23-2A-1 *et seq.*, §23-2C-1 *et seq.*, §23-4-1 *et seq.*, §23-4A-1, §23-4B-1 *et seq.*, and §23-5-1 *et seq.* of this code in which the Insurance Commissioner is required to give notice to a party, if a party is represented by an attorney or other representative, then notice to the attorney or other representative is sufficient notice to the party represented.

**§23-1-14. Forms.**

The Insurance Commissioner shall prepare and furnish free of cost forms (and provide in his or her rules for their distribution so that they may be readily available) of applications for benefits for compensation, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and any other forms considered proper and advisable. It is the duty of employers to constantly keep on hand a sufficient supply of the forms.

**§23-1-15. Procedure before Insurance Commissioner.**

The Insurance Commissioner is not bound by the usual common-law or statutory rules of evidence, but shall adopt formal rules of practice and procedure as herein provided, and may make investigations in a manner that in his or her judgment is best calculated to ascertain the substantial rights of the parties and to carry out the provisions of this chapter.

**§23-1-18. Insurance Commissioner employees not subject to subpoena for workers' compensation hearings.**

No employee of the Insurance Commissioner shall be compelled to testify as to the basis, findings, or reasons for any decision or order rendered by the employee under this chapter in any hearing conducted pursuant to §23-5-1 *et seq.* of this code.

**§23-1-19. Civil remedies.**

(a) Any person, firm, corporation, or other entity which willfully, by means of false statement or representation, or by concealment of any material fact, or by other fraudulent

3 scheme, device, or artifice on behalf of himself or herself, itself, or others, obtains or attempts to  
4 obtain benefits, payments, allowances, or reduced premium costs or other charges, including  
5 Workers' Compensation coverage, from the Insurance Commissioner, a private carrier, or self-  
6 insured employer, to which he, she, or it is not entitled, or in a greater amount than that to which  
7 he, she, or it is entitled, shall be liable to the Insurance Commissioner, private carrier, or self-  
8 insured employer, whichever is applicable, in an amount equal to three times the amount of such  
9 benefits, payments, or allowances to which he, she, or it is not entitled and shall be liable for the  
10 payment of reasonable attorney fees and all other fees and costs of litigation.

11 (b) No criminal action or indictment need be brought against any person, firm, corporation,  
12 or other entity as a condition for establishing civil liability hereunder.

13 (c) A civil action under this section may be prosecuted and maintained on behalf of the  
14 Insurance Commissioner, a private carrier, or self-insured employer by any attorney in contract  
15 with or employed by the Insurance Commissioner, a private carrier, or self-insured employer to  
16 provide such representation.

17 (d) Venue for a civil action under this section shall be either in the county in which the  
18 defendant resides or in Kanawha County as selected by the Insurance Commissioner. Venue for  
19 a civil action under this section for private carriers and self-insured employers shall be either in  
20 the county in which the defendant resides or the county in which the injured worker was employed,  
21 as selected by the private carrier or self-insured employer.

22 (e) The remedies and penalties provided in this section are in addition to those remedies  
23 and penalties provided elsewhere by law.

**§23-1-20. Employment preference for employees in workers' compensation litigation unit.**

1 [Repealed.]

**§23-1-21. Authorization to require the electronic invoices and transfers.**

1 (a) The Insurance Commissioner shall establish a program to require the acceptance of  
2 disbursements by electronic transfer from the funds created in §23-2C-1 *et seq.* of this code to  
3 employers, vendors, claimants, and all others lawfully entitled to receive such disbursements.

4 (b) The Insurance Commissioner may establish a program to require payments of deposits  
5 and other funds into the funds created in §23-2C-1 *et seq.* of this code by electronic transfer of  
6 funds.

7 (c) The Insurance Commissioner may establish a program whereby invoices and other  
8 charges against the funds created in §23-2C-1 *et seq.* of this code may be submitted to the  
9 Insurance Commissioner by electronic means.

10 (d) Any program authorized by this section must be implemented through a rule  
11 promulgated by the Workers' Compensation Industrial Council.

## **ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.**

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

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

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

10 (1) Employers of employees in domestic services;

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

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

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

17           (5) Churches;

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

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

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

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

37           (c) Notwithstanding any other provision of this chapter to the contrary, whenever there are  
38 churches in a circuit which employ one individual clergyman and the payments to the clergyman

39 from the churches constitute his or her full salary, such circuit or group of churches may elect to  
40 be considered a single employer.

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

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

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

64 by election from coverage or be denied benefits merely because he or she is an officer or assistant  
65 officer if, as a matter of fact:

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

69 (B) He or she is engaged ordinarily in performing the duties of a worker, an administrator,  
70 or an employee who is not an officer and receives pay for performing the duties in the capacity of  
71 an employee; or

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

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

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

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

1 [Repealed.]

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

1 (a) Whenever there is a possibility of conflict with respect to the application of workers'  
2 compensation laws because the contract of employment is entered into and all or some portion  
3 of the work is performed or is to be performed in a state or states other than this state, the  
4 employer and the employee may agree to be bound by the laws of this state or by the laws of any  
5 other state in which all or some portion of the work of the employee is to be performed: *Provided*,  
6 That nothing in this section shall be construed as to require an agreement in those instances  
7 where §23-2-1(b)(3) or §23-2-1a(a)(1) of this code are applicable. If the parties agree to be bound  
8 by the laws of this state, an employee injured within the terms and provisions of this chapter is

9 entitled to benefits under this chapter regardless of the situs of the injury or exposure to  
10 occupational pneumoconiosis or other occupational disease, and the rights of the employee and  
11 his or her dependents under the laws of this state shall be the exclusive remedy against the  
12 employer on account of injury, disease, or death in the course of and as a result of the  
13 employment.

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

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

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

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

1 (a) The Legislature finds that every prime contractor should be responsible to ensure that  
2 any subcontractor with which it directly contracts is either self-insured or maintains workers'

3 compensation coverage throughout the periods during which the services of a subcontractor are  
4 used and, further, if the subcontractor is neither self-insured nor covered, then the prime  
5 contractor rather than the Uninsured Employer Fund should be responsible for the payment of  
6 statutory benefits. It is also the intent of the Legislature that this section not be used as the basis  
7 for expanding the liability of a prime contractor beyond the limited purpose of providing coverage  
8 in the limited circumstances and in the manner expressly addressed by this section: *Provided,*  
9 That receipt by the prime contractor of a certificate of coverage from a subcontractor shall be  
10 deemed to relieve the prime contractor of responsibility regarding the subcontractor's workers'  
11 compensation coverage.

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

26 (c) Notwithstanding that an injured employee of a subcontractor is eligible for workers'  
27 compensation benefits pursuant to this section from the prime contractor's carrier or the self-



28 insured prime contractor, whichever is applicable, a subcontractor who has failed to maintain  
29 workers' compensation coverage on its employees:

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

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

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

36 (d) If a claim of an injured employee of a subcontractor is accepted or conditionally  
37 accepted into the Uninsured Employer Fund, both the prime contractor and subcontractor are  
38 jointly and severally liable for any payments made by the fund, and the Insurance Commissioner  
39 may seek recovery of the payments, plus administrative costs and attorneys' fees, from the prime  
40 contractor, the subcontractor, or both: *Provided*, That a prime contractor who is held liable  
41 pursuant to this subsection for the payment of benefits to an injured employee of a subcontractor  
42 may recover the amount of such payments from the subcontractor, plus reasonable attorneys' fee  
43 and costs: *Provided, however*, That if a prime contractor has performed due diligence in all  
44 matters requiring the verification of a subcontractor's maintenance of workers' compensation  
45 insurance coverage, then the prime contractor is not liable for any claim made hereunder against  
46 the subcontractor.

**§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.**

1 (a) Every employer shall furnish the Insurance Commissioner, upon request, all  
2 information required by him or her to carry out the purposes of this chapter. Every employer shall  
3 have a continuous and ongoing duty to maintain current information about its activities, risks, and

4 rates regarding workers' compensation coverage. The Insurance Commissioner may examine  
5 under oath any employer or officer, agent, or employee of any employer.

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

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

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

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

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

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

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

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

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

1           [Repealed.]

**§23-2-5. Notice to employees.**

1           Upon discovery that an employer is not maintaining West Virginia workers' compensation  
2 insurance, the Insurance Commissioner shall issue a written notice to the employees of that  
3 employer. Notice to employees provided in this section shall be given by posting written notice  
4 that the employer is defaulted under the compensation law of West Virginia and that the defaulted  
5 employer is liable to its employees for injury or death, both in Workers' Compensation benefits  
6 and in damages at common law or by statute. The notice shall be in the form prescribed by the  
7 Insurance Commissioner and shall be posted in a conspicuous place at the chief works of the  
8 employer, as it appears in records of the Insurance Commissioner. If the chief works of the  
9 employer cannot be found or identified, the notices shall be posted at the front door of the  
10 courthouse of the county in which the chief works are located, according to the Insurance  
11 Commissioner's records. Any person who shall, prior to the reinstatement of the employer, as  
12 provided in this section, or prior to sixty days after the posting of the notice, whichever shall first  
13 occur, remove, deface, or render illegible the notice, shall be guilty of a misdemeanor and, upon  
14 conviction thereof, shall be fined \$1,000. The notice shall state this provision upon its face. The  
15 Insurance Commissioner may require any sheriff, deputy sheriff, constable, or other official of the

16 State of West Virginia, authorized to serve civil process, to post the notice and to make return  
17 thereof of the fact of the posting to the Insurance Commissioner. Any failure of the officer to post  
18 any notice within 10 days after he or she has received the notice from the Insurance  
19 Commissioner, without just cause or excuse, constitutes a willful failure or refusal to perform a  
20 duty required of him or her by law within the meaning of §61-5-28 of this code. Any person actually  
21 injured by reason of the failure has an action against the official, and upon any official bond he or  
22 she may have given, for the damages as the person may actually have incurred, but not to exceed,  
23 in the case of any surety upon the bond, the amount of the penalty of the bond. Any official posting  
24 the notice as required in this section is entitled to the same fee as is now or may hereafter be  
25 provided for the service of process in suits instituted in courts of record in the State of West  
26 Virginia. The fee shall be paid by the Insurance Commissioner out of any funds at his or her  
27 disposal.

**§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.**

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

7 (b) In addition to the provisions of §23-2-5a(a) of this code, any payment, interest and  
8 penalty due and unpaid under this chapter is a personal obligation of the employer immediately  
9 due and owing to the Insurance Commissioner and shall, in addition, be a lien enforceable against

10 all the property of the employer: *Provided*, That the lien shall not be enforceable as against a  
11 purchaser (including a lien creditor) of real estate or personal property for a valuable consideration  
12 without notice, unless docketed as provided in §38-10C-1 of this code: *Provided, however*, That  
13 the lien may be enforced as other judgment liens are enforced through the provisions of said  
14 chapter and the same is considered deemed by the circuit court to be a judgment lien for this  
15 purpose.

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

29 (d) In case a business subject to the payments, interest, and penalties thereon imposed  
30 under this chapter is operated in connection with a receivership or insolvency proceeding in any  
31 state court in this state, the court under whose direction the business is operated shall, by the  
32 entry of a proper order or decree in the cause, make provisions, so far as the assets in  
33 administration will permit, for the regular payment of the payments, interest, and penalties as they  
34 become due.

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

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

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

1 [Repealed.]

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

1 [Repealed.]

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

1 Any employer subject to this chapter who procures and continuously maintains workers'  
2 compensation insurance as required by this chapter or who elects to make direct payments of  
3 compensation as provided in this section is not liable to respond in damages at common law or  
4 by statute for the injury or death of any employee, however occurring, after so subscribing or  
5 electing, and during any period in which the employer is not in default and has complied fully with  
6 all other provisions of this chapter. Continuation in the service of the employer shall be considered

7 a waiver by the employee and by the parents of any minor employee of the right of action as  
8 aforesaid, which the employee or his or her parents would otherwise have: *Provided*, That in case  
9 of employers not required by this chapter to procure and maintain workers' compensation  
10 insurance, the injured employee has remained in the employer's service with notice that his or  
11 her employer has elected to procure and maintain workers' compensation insurance, or has  
12 elected to make direct payments as aforesaid.

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

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

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

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

15 county court, Board of Education, municipality, or other political subdivision of the state, or against  
16 any employer not required to cover his or her employees under the provisions of this chapter.

**§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.**

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

4 (1) The types of employers are:

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

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

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

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

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



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

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

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

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

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

43 (4) Whenever a self-insured employer furnishes security or bond, including replacement  
44 and amended bonds and other securities, as surety to ensure the employer's or guarantor's  
45 payment of all obligations under this chapter for which the security or bond was furnished, the  
46 security or bond shall be in the most current form or forms approved and authorized by the

47 Insurance Commissioner for use by the employer or its guarantors, surety companies, banks,  
48 financial institutions, or others in its behalf for that purpose.

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

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

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

71 (d)(1) If a self-insured employer defaults in the payment of any portion of surcharges or  
72 assessments required under this chapter or rules promulgated thereunder, or in any payment

73 required to be made as benefits provided by this chapter to the employer's injured employees or  
74 dependents of fatally injured employees, the Insurance Commissioner shall, in an appropriate  
75 case, determine the full accrued value based upon generally accepted actuarial and accounting  
76 principles of the employer's liability, including the costs of all awarded claims and of all incurred  
77 but not reported claims. The amount determined may, in an appropriate case, be assessed  
78 against the employer. The Insurance Commissioner may demand and collect the present value  
79 of the defaulted liability. Interest shall accrue upon the demanded amount as provided in §23-2-  
80 13 of this code until the liability is fully paid. Payment of all amounts then due to the Insurance  
81 Commissioner and to the employer's employees is a sufficient basis for reinstating the employer  
82 to good standing with the Insurance Commissioner and removing the employer from default  
83 status.

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

92 (e) Any self-insured employer which has had a period of inactivity due to the  
93 nonemployment of employees which results in its reporting of no wages on reports to the  
94 Insurance Commissioner for a period of four or more consecutive quarters may have its status  
95 inactivated and shall apply for reactivation to status as a self-insured employer prior to its  
96 reemployment of employees. Despite the inactivation, the self-insured employer shall continue to  
97 make payments on all awards for which it is responsible. Upon application for reactivation of its  
98 status as an operating self-insured employer, the employer shall document that it meets the

99 eligibility requirements needed to maintain self-insured employer status under this section and  
100 any rules adopted to implement it. If the employer is unable to requalify and obtain approval for  
101 reactivation, the employer shall, effective with the date of employment of any employee, purchase  
102 workers' compensation insurance as provided in §23-2C-1 *et seq.* of this code, but shall continue  
103 to be a self-insurer as to the prior period of active status and to furnish security or bond and meet  
104 its prior self-insurance obligations.

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

109 (g) Any employer subject to this chapter, who elects to carry the employer's own risk by  
110 being a self-insured employer and who has complied with the requirements of this section and of  
111 any applicable rules, shall not be liable to respond in damages at common law or by statute for  
112 the injury or death of any employee, however occurring, after the election's approval and during  
113 the period that the employer is allowed to carry the employer's own risk.

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

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

1 If any provision of this chapter or the application of such provision to any circumstance is  
2 held to be unconstitutional or otherwise invalid, the remainder of this chapter or the application of  
3 the provisions to other circumstances shall not be affected thereby. The Legislature hereby

4 declares that it would have passed the remainder of this chapter if it had known that such  
5 provision, or its application to any circumstances, would be declared unconstitutional or otherwise  
6 invalid.

**§23-2-13. Interest.**

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

**§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.**

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

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

1 Notwithstanding any provision in this chapter to the contrary and notwithstanding any  
2 provision in §29A-5-5 of this code to the contrary, in any situation where an employer objects to  
3 a decision or action of the Insurance Commissioner, the employer is entitled to file a written  
4 demand for hearing upon the decision or action in accordance with §33-2-13 of this code. The  
5 written demand must be filed within 30 days of the employer's receipt of notice of the disputed  
6 Insurance Commissioner's decision or action or, in the absence of such receipt, within 60 days of

7 the date of the decision, the time limitations being hereby declared to be a condition of the right  
8 to litigate the decision or action and therefore jurisdictional.

9 The employer's written demand shall clearly identify the decision or action disputed and  
10 the bases upon which the employer disputes the decision or action. Upon receipt of a written  
11 demand, the Insurance Commissioner shall schedule a hearing which shall be conducted in  
12 accordance with the provisions of §29A-5-1 *et seq.* and §33-2-13 of this code. An appeal from a  
13 final decision of the Insurance Commissioner shall be taken in accord with the provisions of §33-  
14 2-13 of this code.

## **ARTICLE 2A. SUBROGATION.**

### **§23-2A-1. Subrogation; limitations.**

1 (a) Where a compensable injury or death is caused, in whole or in part, by the act or  
2 omission of a third party, the injured worker or, if he or she is deceased or physically or mentally  
3 incompetent, his or her dependents or personal representative are entitled to compensation under  
4 the provisions of this chapter, and shall not by having received compensation be precluded from  
5 making claim against the third party.

6 (b) Notwithstanding the provisions of §23-2A-1(a) of this code, if an injured worker, his or  
7 her dependents, or his or her personal representative makes a claim against the third party and  
8 recovers any sum for the claim:

9 (1) With respect to any claim arising from a right of action that arose or accrued, in whole  
10 or in part, on or after January 1, 2006, the private carrier or self-insured employer, whichever is  
11 applicable, shall be allowed statutory subrogation with regard to indemnity and medical benefits  
12 paid as of the date of the recovery.

13 (2) With respect to any claim arising from a right of action that arose or accrued, in whole  
14 or in part, prior to January 1, 2006, the Insurance Commissioner shall be allowed statutory  
15 subrogation with regard to only medical payments paid as of the date of the recovery: *Provided,*  
16 That with respect to any recovery arising out of a cause of action that arose or accrued prior to

July 1, 2003, any money received by the Insurance Commissioner or self-insured employer as subrogation to medical benefits expended on behalf of the injured or deceased worker shall not exceed 50 percent of the amount received from the third party as a result of the claim made by the injured worker, his or her dependents or personal representative, after payment of attorneys' fee and costs, if such exist.

(3) Notwithstanding the provisions of §23-2A-1(b)(1) and (2) of this code, the Insurance Commissioner, acting as administrator of the Uninsured Employer Fund, shall be allowed statutory subrogation with regard to indemnity and medical benefits paid and to be paid from such fund regardless of the date on which the cause of action arose.

(c) For claims that arose or accrued, in whole or in part, prior to the effective date of the reenactment of this section in 2009, and all claims thereafter, the party entitled to subrogation shall permit the deduction from the amount received reasonable attorneys' fees and reasonable costs and may negotiate the amount to accept as subrogation.

(d) In the event that an injured worker, his or her dependents or personal representative makes a claim against a third party, there shall be, and there is hereby created, a statutory subrogation lien upon the moneys received which shall exist in favor of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

(e) It is the duty of the injured worker, his or her dependents, his or her personal representative, or his or her attorney to give reasonable notice to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, after a claim is filed against the third party and prior to the disbursement of any third-party recovery. The statutory subrogation described in this section does not apply to uninsured and underinsured motorist coverage or any other insurance coverage purchased by the injured worker or on behalf of the injured worker. If the injured worker obtains a recovery from a third party and the injured worker, personal representative, or the injured worker's attorney fails to protect the statutory right of subrogation created herein, the injured worker, personal representative, and the injured worker's attorney shall

43 lose the right to retain attorney fees and costs out of the subrogation amount. In addition, such  
44 failure creates a cause of action for the Insurance Commissioner, private carrier, or self-insured  
45 employer, whichever is applicable, against the injured worker, personal representative, and the  
46 injured worker's attorney for the amount of the full subrogation amount and the reasonable fees  
47 and costs associated with any such cause of action.

## **ARTICLE 2B. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS.**

### **§23-2B-1. Occupational safety and health activities; voluntary compliance; consultative services.**

1 [Repealed].

### **§23-2B-2. Mandatory programs; safety committees; requirements; rules; exceptions.**

1 [Repealed].

### **§23-2B-3. Premium rate credits; qualified loss management program; loss management firms; penalties; rules.**

1 [Repealed].

## **ARTICLE 2C. TRANSITION TO A PRIVATE MARKET.**

### **§23-2C-1. Findings and purpose.**

1 (a) The Legislature finds that:

2 (1) There is a long-term actuarial funding crisis in the state-run monopolistic workers'  
3 compensation system;

4 (2) Similar short-term and long-term crises have been ongoing during the past two  
5 decades;

6 (3) During the current crisis, employers in West Virginia find it increasingly difficult to afford  
7 the rates charged by the Workers' Compensation Commission for workers' compensation  
8 coverage and that paying said rates adversely impacts employers' ability to compete in a global  
9 economic environment;



(4) The cost of obtaining workers' compensation coverage from the state system may result in many employers leaving the state;

(5) Employers' access to competitive workers' compensation rates and the resulting economic development benefit is of utmost importance to the citizens of West Virginia;

(6) A mechanism is needed to provide an enduring solution to this recurring workers' compensation crisis;

(7) An employers' mutual insurance company or a similar entity has proven to be a successful mechanism in other states for helping employers secure insurance and for stabilizing the insurance market;

(8) There is a substantial public interest in creating a method to provide a stable workers' compensation insurance market in this state;

(9) The state-run workers' compensation program is a substantial actual and potential liability to the state;

(10) There is substantial public benefit in transferring certain actual and potential future liability of the state to the private sector and creating a stable self-sufficient entity which will be a potential source of workers' compensation coverage for employers in this state;

(11) A stable, financially viable insurer in the private sector will aid in providing a continuing source of insurance funds to compensate injured workers; and

(12) Because the public will greatly benefit from the formation of an employers' mutual insurance company, state efforts to encourage and support the formation of such an entity, including providing funding for the entity's initial capital, is in the clear public interest.

(b) The purpose of this article is to create a mechanism for the formation of an employers' mutual insurance company that will provide:

(1) A means for employers to obtain workers' compensation insurance that is reasonably available and affordable; and

35           (2) Compensation to employees of mutual policyholders who suffer work place injuries as  
36 defined in this chapter.

37           (c) The employers' mutual insurance company contemplated and created as the  
38 successor to the former Workers' Compensation Commission in this article began operation on  
39 January 1, 2006. The state opened to a private, competitive market for workers' compensation  
40 insurance on July 1, 2008. This section remains in this code for historical purposes.

**§23-2C-2. Definitions.**

1           (a) "Insurance Commissioner" means the Insurance Commissioner of West Virginia as  
2 provided in §33-2-1 of this code.

3           (b) "Policy default" means a policyholder that has failed to comply with the terms of its  
4 workers' compensation insurance policy and is consequently without workers' compensation  
5 insurance coverage.

6           (c) "Workers' compensation insurance" means insurance which provides all compensation  
7 and benefits required by this chapter.

8           (d) "Insurer" includes:

9           (1) A self-insured employer; and

10          (2) A private carrier.

11          (e) "Industrial Council" means the advisory group established in §23-2C-5 of this code.

12          (f) "Old Fund" means a fund held by the State Treasurer's office consisting of those funds  
13 transferred to it from the defunct Workers' Compensation Fund or other sources and those funds  
14 due and owing the defunct Workers' Compensation Fund as of June 30, 2005, that are thereafter  
15 collected. The Old Fund and assets in the fund remain property of the state after the transition to  
16 a private market.

17          (g) "Old Fund liabilities" mean all claims payment obligations (indemnity and medical  
18 expenses), related liabilities and appropriate administrative expenses necessary for the  
19 administration of all claims, actual and incurred but not reported, for any claim with a date of injury

20 or last exposure on or before June 30, 2005: *Provided*, That Old Fund liabilities include all claims  
21 payments for any claim, regardless of date of injury or last exposure, through December 31, 2005:  
22 *Provided, however*, That Old Fund liabilities include all claims with dates of injuries or last  
23 exposure prior to July 1, 2004, for bankrupt self-insured employers that had defaulted on their  
24 claims obligations which were recognized by the former Workers' Compensation Commission in  
25 its actuarially determined liability number as of June 30, 2005.

26 (h) "Private carrier" means any insurer or the legal representative of an insurer authorized  
27 by the Insurance Commissioner to provide workers' compensation insurance pursuant to this  
28 chapter. The term does not include a self-insured employer or private employers.

29 (i) "Uninsured Employer Fund" means a fund held by the State Treasurer's office  
30 consisting of those funds transferred to it from the defunct Workers' Compensation Fund and any  
31 other source. Disbursements from the Uninsured Employer Fund shall be upon requisitions  
32 signed by the Insurance Commissioner, and as otherwise set forth in an exempt legislative rule  
33 promulgated by the Industrial Council.

34 (j) "Self-Insured Employer Guaranty Risk Pool" is a fund held by the State Treasurer's  
35 office consisting of those funds transferred to it from the guaranty pool created pursuant to 85  
36 CSR 19 (2007) and any future funds collected through continued administration of that exempt  
37 legislative rule as administered by the Insurance Commissioner. Disbursements shall be made  
38 from the Self-Insured Employer Guaranty Risk Pool upon requisitions signed by the Insurance  
39 Commissioner. The obligations of the fund are as provided in 85 CSR 19 (2007).

40 (k) "Self-Insured Employer Security Risk Pool" is a fund held by the State Treasurer  
41 consisting of those funds paid into it through the Insurance Commissioner's administration of 85  
42 CSR 19 (2007). Disbursement from the fund shall be made from the Self-Insured Employer  
43 Security Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of  
44 the fund are as provided in 85 CSR 19: *Provided*, That the liabilities are limited to those self-

45 insured employers who default on their claims obligations after the termination of the former  
46 Workers' Compensation Commission.

47 (I) "Voluntary market" means the workers' compensation insurance market in which  
48 insurers voluntarily offer coverage to applicants who meet the insurers' underwriting standards or  
49 guidelines.

**§23-2C-3. Private carriers not subject to certain premium taxes, surcharges, and credits;  
regulatory surcharge imposed on private carriers and self-insured employers.**

1 Private carriers including the company, are not subject to payment of insurance premium  
2 taxes, surcharges, and credits contained in §33-3-1 *et seq.* of this code on premiums received for  
3 workers' compensation insurance coverage under this chapter. In lieu thereof, the workers'  
4 compensation insurance market is subject to the following:

5 (1)(A) With respect to fiscal years beginning on and after July 1, 2008, each private carrier  
6 shall collect a surcharge in the amount of five and five-tenths percent of the premium collected  
7 plus the total of all premium discounts based on deductible provisions that were applied: *Provided,*  
8 That prior to June 30, 2013, and every five years thereafter, the Insurance Commissioner shall  
9 review the percentage surcharge and determine a new percentage as he or she deems  
10 necessary; and

11 (B) The amounts required to be collected under §23-2C-3(a)(1)(A) of this code shall be  
12 remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding  
13 the end of the quarter in which they are collected, except for the fourth quarter for which the  
14 surcharge shall be remitted on or before March 1 of the succeeding year.

15 (2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge  
16 to be remitted on a quarterly basis by self-insured employers and said percentage shall be  
17 calculated by dividing the previous year's self-insured payroll in the state into the portion of the  
18 Insurance Commissioner's budget amount attributable to regulation of the self-insured employer  
19 market. This resulting percentage shall be applied to each self-insured employer's payroll and the

20 resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The  
21 Industrial Council may promulgate a rule for implementation of this section. All private carriers  
22 and self-insured employers shall furnish the Insurance Commissioner with all required information  
23 and cooperate in all respects necessary for the Insurance Commissioner to perform the duties  
24 set forth in this section and in other provisions of this chapter and chapter 33 of this code. The  
25 surcharge shall be calculated so as to only defray the costs associated with the administration of  
26 this chapter and the funds raised shall not be used for any other purpose.

**§23-2C-3a. Employers' mutual insurance company - additional provisions enacted in  
November 2005.**

1 [Repealed.]

**§23-2C-4. Governance and organization.**

1 [Repealed.]

**§23-2C-6. Continuation of old fund, uninsured employer fund, self-insured employer  
guaranty risk pool, and self-insured employer security risk pool.**

1 There is hereby continued in the State Treasury a "Workers' Compensation Old Fund",  
2 "Workers' Compensation Uninsured Employers' Fund", "Self-insured Employer Guaranty Risk  
3 Pool", and "Self-insured Employer Security Risk Pool". The Insurance Commissioner shall have  
4 full authority to administer the Old Fund, the Uninsured Employers' Fund, the Self-Insured  
5 Employer Guaranty Risk Pool, and the Self-Insured Employer Security Risk Pool.

**§23-2C-7. Custody, investment and disbursement of funds.**

1 The State Treasurer shall be the custodian of the Old Fund, the Uninsured Employer Fund,  
2 the Self-Insured Employer Guaranty Risk Pool, and the Self-Insured Employer Security Risk Pool,  
3 and moneys payable to each of these funds shall be deposited in the State Treasury to the credit  
4 of the funds. Each fund shall be a separate and distinct fund upon the books and records of the  
5 Auditor and Treasurer. Disbursements from these funds shall be made upon requisitions signed  
6 by the Insurance Commissioner. The Old Fund, the Uninsured Employer Fund, the Self-Insured

7 Employer Guaranty Risk Pool, and the Self-Insured Employer Security Risk Pool are participant  
8 plans as defined in §12-6-2 of this code and are subject to the provisions of §12-6-9a of this code.  
9 The funds may be invested by the Investment Management Board in accordance with §12-6-1 *et*  
10 *seq.* of this code.

**§23-2C-8. Workers' Compensation Uninsured Employer Fund.**

1 (a) The Workers' Compensation Uninsured Employer Fund shall be governed by the  
2 following:

3 (1) All money and securities in the fund must be held by the State Treasurer as custodian  
4 thereof to be used solely as provided in this article.

5 (2) The State Treasurer may disburse money from the fund only upon written requisition  
6 of the Insurance Commissioner.

7 (3) *Assessments.* — The Insurance Commissioner shall assess each private carrier and  
8 may assess self-insured employers an amount to be deposited in the fund. The assessment may  
9 be collected by each private carrier from its policyholders in the form of a policy surcharge. To  
10 establish the amount of the assessment, the Insurance Commissioner shall determine the amount  
11 of money necessary to maintain an appropriate balance in the fund for each fiscal year and shall  
12 allocate a portion of that amount to be payable by each of the groups subject to the assessment.  
13 After allocating the amounts payable by each group, the Insurance Commissioner shall apply an  
14 assessment rate to:

15 (A) Private carriers that reflects the relative hazard of the employments covered by the  
16 private carriers, results in an equitable distribution of costs among the private carriers and is based  
17 upon expected annual premiums to be received;

18 (B) Self-insured employers, if assessed, that results in an equitable distribution of costs  
19 among the self-insured employers and is based upon expected annual expenditures for claims;  
20 and

(C) Any other groups assessed that results in an equitable distribution of costs among them and is based upon expected annual expenditures for claims or premium to be received.

(4) The Industrial Council may adopt rules for the establishment and administration of the assessment methodologies, rates, payments, and any penalties that it determines are necessary to carry out the provisions of this section.

*(b) Payments from the fund. —*

(1) Except as otherwise provided in this subsection, an injured employee of any employer required to be covered under this chapter who has failed to obtain coverage may receive compensation from the Uninsured Employer Fund if such employee meets all jurisdictional and entitlement provisions of this chapter, files a claim with the Insurance Commissioner and makes an irrevocable assignment to the Insurance Commissioner of a right to be subrogated to the rights of the injured employee.

(2) Employees who are injured while employed by a self-insured employer are ineligible for benefits from the Workers' Compensation Uninsured Employer Fund.

*(c) Initial determination upon receipt of a claim. —*

If a claim is filed against the Uninsured Employer Fund, the Insurance Commissioner or his or her third-party administrator shall: (1) Accept the claim into the fund if it is determined that the employer was required to maintain workers' compensation coverage with respect to the injured worker but failed to do so; (2) reject the claim if it is determined that the employer maintained such coverage or was not required to do so; or (3) in a claim involving the availability of benefits pursuant to §23-2-1d of this code, either reject or conditionally accept the claim. An aggrieved party may file a protest with the Office of Judges, or Board of Review upon the termination of the Office of Judges, to any decision by the Insurance Commissioner or the third-party administrator to accept or reject a claim into the fund, as well as to any claims decisions made with respect to any claim accepted into the fund and such protests shall be determined in the same manner as disputed claims are determined pursuant to the provisions of §23-5-1 *et seq.*

47 of this code: *Provided*, That in any proceeding involving the decision to accept or refuse to accept  
48 a claim into the fund, the employer has the burden of proving that it either provided mandatory  
49 workers' compensation insurance coverage or that it was not required to do so.

50 (d) *Employer liability.* —

51 (1) Any employer who has failed to provide mandatory coverage required by the provisions  
52 of this chapter is liable for all payments made and to be made on its behalf, including any benefits,  
53 administrative costs and attorney's fees paid from the fund or incurred by the Insurance  
54 Commissioner, plus interest calculated in accordance with the provisions of §23-2-13 of this code.

55 (2) The Insurance Commissioner:

56 (A) May bring a civil action in a court of competent jurisdiction to recover from the employer  
57 the amounts set forth in §23-2C-8(d)(1) of this code. In any such action, the Insurance  
58 Commissioner may also recover the present value of the estimated future payments to be made  
59 on the employer's behalf and administrative costs and attorney's fees attributable to such claim:  
60 *Provided*, That the failure of the Insurance Commissioner to include a claim for future payments  
61 shall not preclude one or more subsequent actions for such amounts;

62 (B) May enter into a contract with any person, including the third-party administrator of the  
63 Uninsured Employer Fund, to assist in the collection of any liability of an uninsured employer; and

64 (C) In lieu of a civil action, may enter into an agreement or settlement regarding the  
65 collection of any liability of an uninsured employer.

66 (3) In addition to any other liabilities provided in this section, the Insurance Commissioner  
67 may impose an administrative penalty of not more than \$10,000 against an employer if the  
68 employer fails to provide mandatory coverage required by this chapter. All penalties and other  
69 moneys collected pursuant to this section shall be deposited into the Uninsured Employer Fund.

**§23-2C-11. Transfer of assets from new fund to the mutual insurance company established  
as a successor to the commission; transfer of commission employees.**

1 [Repealed.]



**§23-2C-12. Certain personnel provisions governing Workers' Compensation Commission employees and employees laid off by the employers' mutual insurance company during its initial year of operation.**

1       A person who was employed by the former Workers' Compensation Commission upon its  
2       termination or was laid off by the employers' mutual insurance company created in this article on  
3       or before June 30, 2008, is entitled to be placed on an appropriate reemployment list maintained  
4       by the Department of Personnel and to be allowed a preference on that list. The Department of  
5       Personnel shall maintain such an employee on the reemployment list indefinitely, or until the  
6       employee has declined three offers of employment at a paygrade substantially similar to that of  
7       his or her position upon termination of the former Workers' Compensation Commission, or until  
8       he or she is reemployed by the executive branch of state government, whichever occurs earlier.

**§23-2C-13. Certain retraining benefits to those employees laid-off by the mutual during its first year of operation.**

1       [Repealed.]

**§23-2C-14. Certain benefits provided to commission employees.**

1       [Repealed.]

**§23-2C-15. Mandatory coverage; changing of coverage.**

1       (a) An employer may elect to purchase workers' compensation insurance from another a  
2       private carrier licensed and otherwise authorized to transact workers' compensation insurance in  
3       this state or (3) self-insure its obligations if it satisfies all requirements of this code to so self-  
4       insure and is permitted to do so. Private carriers are permitted to sell workers' compensation  
5       insurance through licensed agents in the state. To the extent that a private carrier markets  
6       workers' compensation insurance through a licensed agent, it is subject to all applicable  
7       provisions of chapter 33 of this code.

8       (b) Every employer shall continuously post a notice upon its premises in a conspicuous  
9       place identifying its workers' compensation insurer. The notice must include the name, business

10 address, and telephone number of the insurer and of the person to contact with questions about  
11 a claim.

12 (c) Any rule promulgated by the Industrial Council empowering agencies of this state to  
13 revoke or refuse to grant, issue, or renew any contract, license, permit, certificate, or other  
14 authority to conduct a trade, profession, or business to or with any employer whose account is in  
15 default with regard to any liability under this chapter shall be fully enforceable by the Insurance  
16 Commissioner against the employer.

17 (d) Private carriers may cancel a policy upon the issuance of 30 days' written advance  
18 notice to the policyholder and may refuse to renew a policy upon the issuance of 60 days' written  
19 advance notice to the policyholder: *Provided*, That cancellation of the policy by the carrier for  
20 failure of consideration to be paid by the policyholder or for refusal to comply with a premium audit  
21 is effective after 10 days' advance written notice of cancellation to the policyholder.

22 (e) Every private carrier shall notify the Insurance Commissioner as follows: (1) Of the  
23 issuance or renewal of insurance coverage, within 30 days of: (A) The effective date of coverage;  
24 or (B) the private carrier's receipt of notice of the employer's operations in this state, whichever is  
25 later; (2) of a termination of coverage by the private carrier due to refusal to renew or cancellation,  
26 at least 10 days prior to the effective date of the termination; and (3) of a termination of coverage  
27 by an employer, within 10 days of the private carrier's receipt of the employer's request for such  
28 termination; the notifications shall be on forms developed or in a manner prescribed by the  
29 Insurance Commissioner.

30 (f) For the purposes of §23-2C-15(d) and (e) of this code, the transfer of a policyholder  
31 between insurance companies within the same group is not considered a cancellation or refusal  
32 to renew a workers' compensation insurance policy.

**§23-2C-16. Administration of Old Fund, Uninsured Employer Fund, Self-Insured Employer  
Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, and Private Carrier  
Guaranty Fund.**

1 (a) The Insurance Commissioner shall review claims determined to be payable from the  
2 Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured  
3 Employer Security Risk Pool, and Private Carrier Guaranty Fund and may contest the  
4 determination pursuant to the provisions of §23-5-1 *et seq.* of this code. The Insurance  
5 Commissioner may retain a third-party administrator for said funds. The administrative duties  
6 may include, receipt of all claims, processing said claims, providing for the payment of said claims  
7 through the State Treasurer's office or other applicable state agency, and ensuring, through the  
8 selection and assignment of counsel, that claims decisions are properly defended.

9 (b) The Insurance Commissioner may conduct or cause to be conducted an annual audit  
10 to be performed on said funds.

11 (c) The Insurance Commissioner may contract or employ counsel to perform legal services  
12 related solely to the collection of moneys due the Old Fund, including the collection of moneys  
13 due the Old Fund and enforcement of repayment agreements entered into for the collection of  
14 moneys due on or before June 30, 2005, in any administrative proceeding and in any state or  
15 federal court.

16 (d) During the fiscal years beginning July 1, 2019, July 1, 2020, July 1, 2021, July 1, 2022,  
17 and July 1, 2023, the Insurance Commissioner may, in his or her discretion, transfer special  
18 revenue moneys contained in the Insurance Commission Fund to the Old Fund in any fiscal year  
19 in which the Insurance Commissioner has determined, and an independent Auditor has attested  
20 thereto, that a deficit balance existed in the Old Fund for the prior fiscal year.

**§23-2C-18. Ratemaking; Insurance Commissioner.**

1 (a)(1) Rates for workers' compensation insurance are subject to the provisions of this  
2 section, §23-2C-18a of this code, and §33-20-1 *et seq.* of this code.

3 (2) In the event of any conflict, the provisions of this article shall have paramount effect,  
4 but the provisions in this chapter and chapter 33 of this code shall be construed as complementary  
5 and harmonious unless so clearly in conflict that they cannot reasonably be reconciled.

6 (b) An insurer shall file its rates by filing a multiplier or multipliers to be applied to  
7 prospective loss costs that have been filed by the designated advisory organization on behalf of  
8 the insurer in accordance with §23-2C-18a of this code and may also file carrier specific rating  
9 plans.

10 (c) Rates must not be excessive, inadequate, or unfairly discriminatory, nor may an insurer  
11 charge any rate which if continued will have or tend to have the effect of destroying competition  
12 or creating a monopoly.

13 (d) The Insurance Commissioner may disapprove rates if there is not a reasonable degree  
14 of price competition at the consumer level with respect to the class of business to which they  
15 apply. In determining whether a reasonable degree of price competition exists, the Insurance  
16 Commissioner shall consider all relevant tests, including:

17 (1) The number of insurers actively engaged in the class of business and their shares of  
18 the market;

19 (2) The existence of differentials in rates in that class of business;

20 (3) Whether long-run profitability for private carriers generally of the class of business is  
21 unreasonably high in relation to its risk;

22 (4) Consumers' knowledge in regard to the market in question; and

23 (5) Whether price competition is a result of the market or is artificial. If competition does  
24 not exist, rates are excessive if they are likely to produce a long-run profit that is unreasonably  
25 high in relation to the risk of the class of business, or if expenses are unreasonably high in relation  
26 to the services rendered.

27 (e) Rates are inadequate if they are clearly insufficient, together with the income from  
28 investments attributable to them, to sustain projected losses and expenses in the class of  
29 business to which they apply.

30 (f) One rate is unfairly discriminatory in relation to another in the same class if it clearly  
31 fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly

32 discriminatory because different premiums result for policyholders with similar exposure to loss  
33 but different expense factors, or similar expense factors but different exposure to loss, so long as  
34 the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if  
35 they are averaged broadly among persons insured under a group, franchise, or blanket policy.

**§23-2C-19. Premium payment; employer default; special provisions as to employer default  
collection.**

1 (a) Each employer who is required to purchase and maintain workers' compensation  
2 insurance or who elects to purchase workers' compensation insurance shall pay a premium to a  
3 private carrier. Each carrier shall notify its policyholders of the mandated premium payment  
4 methodology and under what circumstances a policyholder will be found to be in policy default.

5 (b) An employer who is required to purchase and maintain workers' compensation  
6 insurance but fails to do so or otherwise enters policy default shall be deprived of the benefits and  
7 protection afforded by this chapter, including §23-2-6 of this code, and the employer is liable as  
8 provided in §23-2-8 of this code: The policy defaulted employer's liability under these sections is  
9 retroactive to the day the policy default occurs: The private carrier shall notify the policy defaulted  
10 employer of the method by which the employer may be reinstated with the private carrier.

11 (c) In addition to any other liabilities provided in this section, the Insurance Commissioner  
12 may impose an administrative fine of not more than \$10,000 against an employer if the employer  
13 fails to provide mandatory coverage required by this chapter.

14 (d) Every agency shall, upon notification of employer default by the Insurance  
15 Commissioner, immediately begin the process to revoke or terminate any contract, license,  
16 permit, certificate, or other authority to conduct a trade, profession, or business in this state and  
17 shall refuse to issue, grant, or renew any such contract, license, permit, certificate, or authority.

18 (1) The term "employer default" means having an outstanding balance or liability to the  
19 Old Fund or to the Uninsured Employers' Fund or being in policy default, as defined in §23-2C-2  
20 of this code, or failure to maintain mandatory workers' compensation coverage. An employer is

21 not in default if it has entered into a repayment agreement with the Insurance Commissioner and  
22 remains in compliance with the obligations under the repayment agreement.

23 (2) The term "agency" includes any unit of state government such as officers, agencies,  
24 divisions, departments, boards, commissions, authorities, or public corporations.

25 (e) Any amounts owed by an employer to the state as a result of an employer default is a  
26 personal liability of the employer, its officers, owners, partners, and directors and is immediately  
27 due and owing and shall, in addition, be a lien enforceable against all the property of the employer,  
28 its officers, owners, partners, and directors: *Provided*, That the lien shall not be enforceable as  
29 against a purchaser, including a lien creditor, of real estate or personal property for a valuable  
30 consideration without notice, unless docketed as provided in §38-10C-1 of this code: *Provided*,  
31 *however*, That the lien may be enforced as other judgment liens are enforced through the  
32 provisions of chapter 38 of this code and the same is considered by the circuit court to be a  
33 judgment lien for this purpose.

34 (f) The Insurance Commissioner shall propose rules for adoption by the industrial council  
35 to effectuate the purposes of this section including the conditions under which agencies shall  
36 comply with the provisions of §23-2C-19(d) of this code and specifying how notice of default shall  
37 be given by the Insurance Commissioner.

**§23-2C-20. Claims administration issues.**

1 (a) Private carriers and self-insured employers shall at all times be bound and shall comply  
2 fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in §23-  
3 4-1 *et seq.* of this code pertaining to disability and death benefits are binding on and shall be  
4 strictly adhered to by the successor to the commission, private carriers, and the self-insured  
5 employer in their administration of claims presented by employees of the self-insured employer  
6 private carriers and self-insured employers.

(b) The Occupational Pneumoconiosis Board shall be administered by the Insurance Commissioner. Private carriers and self-insured employers shall have all authority and responsibility in the administration and processing of occupational pneumoconiosis claims.

(c) Upon termination of the former Workers' Compensation Commission, claims allocation responsibilities transferred to the Insurance Commissioner.

(d) The Insurance Commissioner's third-party administrator for the Old Fund has administrative and adjudicatory authority in administering old law liability and deciding old law claims.

**§23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.**

(a) No civil action may be brought or maintained by an employee against a private carrier or a third-party administrator, or any employee or agent of a private carrier or third-party administrator, who violates any provision of this chapter or chapter 33 of this code.

(b) Any administrative fines or remedies provided in this chapter or chapter 33 of this code or rules promulgated by the Insurance Commissioner are the exclusive civil remedies for any violation of this chapter committed by a private carrier or a third-party administrator or any agent or employee of a private carrier or a third-party administrator.

(c) Upon a determination by the Office of Judges, or by the Board of Review upon the termination of the Offices Judges, that a denial of compensability, a denial of an award of temporary total disability, or a denial of an authorization for medical benefits was unreasonable, reasonable attorney's fees and the costs actually incurred in the process of obtaining a reversal of the denial shall be awarded to the claimant and paid by the private carrier or self-insured employer which issued the unreasonable denial. A denial is unreasonable if, after submission by or on behalf of the claimant, of evidence of the compensability of the claim, the entitlement to temporary total disability benefits or medical benefits, the private carrier or self-insured employer is unable to demonstrate that it had evidence or a legal basis supported by legal authority at the

17 time of the denial which is relevant and probative and supports the denial of the award or  
18 authorization. Payment of attorney's fees and costs awarded under this subsection will be made  
19 to the claimant at the conclusion of litigation, including all appeals, of the claimant's protest of the  
20 denial.

**§23-2C-23. Transfer of assets and contracts.**

1 [Repealed.]

**§23-2C-24. Surplus note or other loan arrangement for new fund.**

1 [Repealed.]

**ARTICLE 2D. WORKERS' COMPENSATION DEBT REDUCTION BONDS.**

**§23-2D-1. Short title.**

1 [Repealed.]

**§23-2D-2. Legislative findings; legislative intent.**

1 [Repealed.]

**§23-2D-3. Definitions.**

1 [Repealed.]

**§23-2D-4. Workers' Compensation debt reduction revenue bonds; amount; when may  
issue.**

1 [Repealed.]

**§23-2D-5. Special account created; use of moneys in the Fund.**

1 [Repealed.]

**§23-2D-5a. Excess regular coal severance taxes.**

1 [Repealed.]

**§23-2D-6. Creation of Debt Service Fund; disbursements to pay debt service on Workers'  
Compensation debt reduction revenue bonds.**

1 [Repealed.]



**§23-2D-7. Covenants of state.**

1 [Repealed.]

**§23-2D-8. Workers' compensation debt reduction revenue bonds lawful investments.**

1 [Repealed.]

**§23-2D-9. Refunding bonds.**

1 [Repealed.]

**§23-2D-10. Approval and payment of all necessary expenses.**

1 [Repealed.]

**ARTICLE 3. WORKERS' COMPENSATION FUND.**

**§23-3-1. Compensation Fund; catastrophe and catastrophe payment defined; compensation by employers.**

1 [Repealed.]

**§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under former article six.**

1 [Repealed.]

**§23-3-2. Custody, investment and disbursement of funds.**

1 [Repealed.]

**§23-3-3. Investment of surplus funds required.**

1 [Repealed.]

**§23-3-4. Deposits and disbursements considered abandoned property; disposition of property.**

1 [Repealed.]

**§23-3-5. Authorization to require the electronic invoices and transfers.**

1 [Repealed.]

**§23-3-6. Emergency fiscal measures.**

1 [Repealed.]

## **ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.**

### **§23-4A-1. Disabled Workers' Relief Fund.**

1           Persons who are receiving benefits from the Disabled Workers' Relief Fund at the time  
2           the amendments made to this article by the Legislature during the 2022 regular session become  
3           effective shall continue to receive said benefits as awarded.

### **§23-4A-2. To whom benefits paid.**

1           [Repealed.]

### **§23-4A-3. Computation of benefits.**

1           [Repealed.]

### **§23-4A-4. Mode of payment.**

1           [Repealed.]

### **§23-4A-5. Employers providing own system of compensation.**

1           [Repealed.]

### **§23-4A-6. Powers of commission over disabled workers' relief fund.**

1           [Repealed.]

### **§23-4A-8. Disabled workers' relief fund; how funded.**

1           [Repealed.]

### **§23-4A-9. Transfer of authority to the Insurance Commissioner.**

1           [Repealed.]

## **ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.**

### **§23-4B-2. Coal-Workers' Pneumoconiosis Fund established.**

1           For the relief of persons who are entitled to receive benefits by virtue of Title IV of the  
2           federal Coal Mine Health and Safety Act of 1969, as amended, for claims incurred under said Act,  
3           including all claims where the date of last exposure is on or before December 31, 2005, without  
4           regard to the date the claim is filed, there is continued a fund to be known as the Coal-Workers'  
5           Pneumoconiosis Fund. The Coal-Workers' Pneumoconiosis Fund shall consist of premiums and

6 other funds paid to the fund by employers, subject to the provisions of Title IV of the federal Coal  
7 Mine Health and Safety Act of 1969, as amended, who shall elect to subscribe to the fund to  
8 ensure the payment of benefits required by the Act for claims incurred under said Act, including  
9 all claims where the date of last exposure is on or before December 31, 2005, without regard to  
10 the date the claim is filed.

11 The State Treasurer shall be the custodian of the Coal-Workers' Pneumoconiosis Fund  
12 and all premiums, deposits, or other moneys paid to the fund shall be deposited in the State  
13 Treasury to the credit of the Coal-Workers' Pneumoconiosis Fund. Disbursements from the fund  
14 shall be made upon requisition signed by the Insurance Commissioner. The West Virginia  
15 Investment Management Board may invest any surplus, reserve, or other moneys belonging to  
16 the Coal-Workers' Pneumoconiosis Fund in accordance with §12-6-1 *et seq.* of this code.

**§23-4B-4. Who may subscribe.**

1 Only those employers who are subject to the provisions of Title IV of the federal Coal Mine  
2 Health and Safety Act of 1969, as amended, may elect to subscribe to the Coal-Workers'  
3 Pneumoconiosis Fund to insure the liability imposed upon such employers under the provisions  
4 of Title IV of the Act. Coverage by the Coal-Workers' Pneumoconiosis Fund will be provided only  
5 for claims incurred under the Act, including all claims where the date of last exposure is on or  
6 before December 31, 2005, without regard to the date the claim is filed. Pursuant to §23-4B-9 of  
7 this code, the Coal-Workers' Pneumoconiosis Fund was closed to new subscribers after  
8 December 31, 2005, upon the termination of the former Workers' Compensation Commission.  
9 Only those persons entitled to benefits under §23-4B-3 of this code and who were employed by  
10 employers who elected to subscribe to the Coal-Workers' Pneumoconiosis Fund prior to its  
11 closure may apply for benefits.

**§23-4B-5. Payment of benefits.**

1 Upon receipt of an order of compensation issued pursuant to a claim for benefits filed  
2 under the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as

3 amended, for claims incurred under said Act, including all claims where the date of last exposure  
4 is on or before December 31, 2005, without regard to the date the claim is filed, the Insurance  
5 Commissioner shall disburse the Coal-Workers' Pneumoconiosis Fund in the amounts and to the  
6 persons as directed by the order.

**§23-4B-6. Coal-workers' pneumoconiosis fund; how funded.**

1 [Repealed.]

**§23-4B-7. Administration.**

1 The Coal-Workers' Pneumoconiosis Fund shall be administered by the Insurance  
2 Commissioner, who shall employ any employees and contract with any parties necessary to  
3 discharge his or her duties and responsibilities under this article. All payments of salaries and  
4 expenses of the employees and all expenses peculiar to the administration of this article shall be  
5 made by the State Treasurer from the Coal-Workers' Pneumoconiosis Fund upon requisitions  
6 signed by the Insurance Commissioner. *Provided*, That the employers' mutual insurance  
7 company established pursuant to article two-c of this chapter shall be the administrator of the  
8 Coal-Workers' Pneumoconiosis Fund for a term not to exceed three years following the  
9 termination of the Workers' Compensation Commission pursuant to an agreement to be entered  
10 into between the Insurance Commissioner and the Company prior to the termination of the  
11 Workers' Compensation Commission. The Company's administrative duties may include, but not  
12 be limited to, receipt of all claims, processing said claims, providing for the payment of said claims  
13 through the State Treasurer's office and ensuring, through the selection and assignment of  
14 counsel, that claims decisions are properly defended. Any contract entered into by the Insurance  
15 Commissioner for the administration of the Coal-Workers' Pneumoconiosis Fund thereafter shall  
16 be subject to the procedures set forth in article three, chapter five-a of this code.

**§23-4B-8. Separable from workers' compensation fund.**

1 [Repealed.]

**§23-4B-8a. Legislative findings; transfers to the state; maximum transfer authorization; purpose for which moneys transferred may be disbursed and expended; maximum amount of transfer authorization; terms and conditions for repayment; premiums to be set without regard to transfers; creation of special account in State Treasury.**

1 [Repealed.]

**§23-4B-8b. Transfer of funds to workers' compensation fund.**

1 [Repealed.]

**§23-4B-9. Closure of Coal-Workers' Pneumoconiosis Fund.**

1 Upon the termination of the former Workers' Compensation Commission, the Coal-  
2 Workers' Pneumoconiosis Fund shall close to new subscribers. All claims payment obligations,  
3 including indemnity benefits, medical benefits, administrative, and all other expenses necessary  
4 for the administration and defense of claims, where the date of last exposure is on or before  
5 December 31, 2005, without regard to the date the claim is filed, shall be an obligation of the  
6 Coal-Workers' Pneumonoconiosis Fund.

## **ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.**

**§23-4C-1. Purpose.**

1 [Repealed.]

**§23-4C-2. Employers' excess liability fund established.**

1 [Repealed.]

**§23-4C-3. Payment of excess damages from fund.**

1 [Repealed.]

**§23-4C-4. Employers' excess liability fund; how funded.**

1 [Repealed.]

**§23-4C-5. Administration.**

1 [Repealed.]

**§23-4C-6. Novation to the successor of the commission.**

1 [Repealed.]

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman, House Committee


  
Chairman, Senate Committee

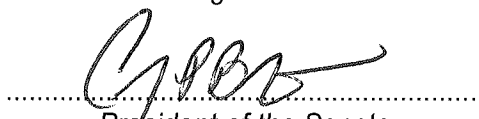
Originating in the House.

In effect ninety days from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

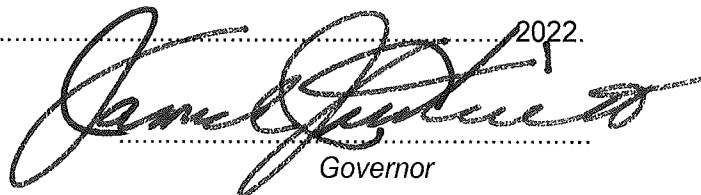
  
President of the Senate

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2022 MAR 30 P 5:03

FILED

The within is approved..... this the 30th  
day of March..... 2022.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 25 2022

Time 11:38am