

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**ENROLLED**

## **House Bill 4628**

BY DELEGATES NELSON, C. MILLER, BOGGS, WESTFALL,

ESPINOSA, AMBLER, FRICH, HARTMAN AND STORCH

[Passed March 9, 2018; in effect ninety days from passage.]



1 AN ACT to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended, relating  
2 to authorizing the redirection of amounts collected from certain surcharges and  
3 assessments on workers' compensation insurance policies for periods prior to January 1,  
4 2019; terminating the surcharges and assessments after December 31, 2018; and  
5 terminating the provisions of the section beginning on and after January 1, 2019, and  
6 exceptions thereto.

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

**ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.**

**§23-2C-3. Creation of employers' mutual insurance company as successor organization of  
the West Virginia Workers' Compensation Commission.**

1 (a) (1) On or before July 1, 2005, the executive director may take such actions as are  
2 necessary to establish an employers' mutual insurance company as a domestic, private, nonstock  
3 corporation to:

4 (A) Insure employers against liability for injuries and occupational diseases for which their  
5 employees may be entitled to receive compensation pursuant to this chapter and federal  
6 Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §901, *et seq.*;

7 (B) Provide employer's liability insurance incidental to, and provided in connection with,  
8 the insurance specified in paragraph (A) of this subdivision, including coal workers'  
9 pneumoconiosis coverage and employer excess liability coverage as provided in this chapter; and

10 (C) Transact other kinds of property and casualty insurance for which the company is  
11 otherwise qualified under the provisions of this code.

12 (2) The company may not sell, assign or transfer substantial assets or ownership of the  
13 company.

14 (b) If the executive director establishes a domestic mutual insurance company pursuant  
15 to subsection (a) of this section:

16           (1) As soon as practical, the company established pursuant to the provisions of this article  
17 shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws  
18 with the Insurance Commissioner and apply for a license with the Insurance Commissioner to  
19 transact insurance in this state. Notwithstanding any other provision of this code, the Insurance  
20 Commissioner shall act on the documents within fifteen days of the filing by the company.

21           (2) In recognition of the workers' compensation insurance liability insurance crisis in this  
22 state at the time of enactment of this article and the critical need to expedite the initial operation  
23 of the company, the Legislature authorizes the Insurance Commissioner to review the  
24 documentation submitted by the company and to determine the initial capital and surplus  
25 requirements of the company, notwithstanding the provisions of section five-b, article three,  
26 chapter thirty-three of this code. The company shall furnish the Insurance Commissioner with all  
27 information and cooperate in all respects necessary for the Insurance Commissioner to perform  
28 the duties set forth in this section and in other provisions of this chapter and chapter thirty-three  
29 of this code. The Insurance Commissioner shall monitor the economic viability of the company  
30 during its initial operation on not less than a monthly basis, until the commissioner, in his or her  
31 discretion, determines that monthly reporting is not necessary. In all other respects the company  
32 shall comply with the applicable provisions of chapter thirty-three of this code.

33           (3) Subject to the provisions of subdivision (4) of this subsection, the Insurance  
34 Commissioner may waive other requirements imposed on mutual insurance companies by the  
35 provisions of chapter thirty-three of this code the Insurance Commissioner determines are  
36 necessary to enable the company to begin insuring employers in this state at the earliest possible  
37 date.

38           (4) Within forty months of the date of the issuance of its license to transact insurance, the  
39 company shall comply with the capital and surplus requirements set forth in subsection (a),  
40 section five-b, article three, chapter thirty-three of this code in effect on the effective date of this  
41 enactment, unless the deadline is extended by the Insurance Commissioner.

42 (c) For the duration of its existence, the company is not a department, unit, agency or  
43 instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the  
44 company, whenever incurred, are the debts, claims, obligations and liabilities of the company only  
45 and not of the state or of any department, unit, agency, instrumentality, officer or employee of the  
46 state.

47 (d) The moneys of the company are not part of the General Revenue Fund of the state.  
48 The debts, claims, obligations and liabilities of the company are not a debt of the state or a pledge  
49 of the credit of the state.

50 (e) The company is not subject to provisions of article nine-a, chapter six of this code; the  
51 provisions of article two, chapter six-c of this code; the provisions of chapter twenty-nine-b of this  
52 code; the provisions of article three, chapter five-a of this code; the provisions of article six,  
53 chapter twenty-nine of this code; or the provisions of chapter twelve of this code.

54 (f) If the commission has been terminated, effective upon the termination, private carriers,  
55 including the company, are not subject to payment of premium taxes, surcharges and credits  
56 contained in article three, chapter thirty-three of this code on premiums received for coverage  
57 under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the  
58 following:

59 (1) (A) Each fiscal year, the Insurance Commissioner shall calculate a percentage  
60 surcharge to be collected by each private carrier from its policyholders. The surcharge percentage  
61 shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible  
62 payments by all employers into the portion of the Insurance Commissioner's budget amount  
63 attributable to regulation of the private carrier market. This resulting percentage shall be applied  
64 to each policyholder's premium payment and deductible payments as a surcharge and remitted  
65 to the Insurance Commissioner. Said surcharge shall be remitted within ninety days of receipt of  
66 premium payments;

67 (B) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the surcharge  
68 set forth in the preceding paragraph, each private carrier shall collect a surcharge in the amount  
69 of five and five-tenths percent of the premium collected plus the total of all premium discounts  
70 based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013, and  
71 every five years thereafter, the commissioner shall review the percentage surcharge and  
72 determine a new percentage as he or she deems necessary;

73 (C) The amounts required to be collected under paragraph (B) of this subdivision shall be  
74 remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding  
75 the end of the quarter in which they are collected, except for the fourth quarter for which the  
76 surcharge shall be remitted on or before March 1 of the succeeding year.

77 (2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge  
78 to be remitted on a quarterly basis by self-insured employers and said percentage shall be  
79 calculated by dividing previous year's self-insured payroll in the state into the portion of the  
80 Insurance Commissioner's budget amount attributable to regulation of the self-insured employer  
81 market. This resulting percentage shall be applied to each self-insured employer's payroll and the  
82 resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The  
83 Industrial Council may promulgate a rule for implementation of this section. The company, all  
84 other private carriers and all self-insured employers shall furnish the Insurance Commissioner  
85 with all required information and cooperate in all respects necessary for the Insurance  
86 Commissioner to perform the duties set forth in this section and in other provisions of this chapter  
87 and chapter thirty-three of this code. The surcharge shall be calculated so as to only defray the  
88 costs associated with the administration of this chapter and the funds raised shall not be used for  
89 any other purpose except as set forth in subdivision (4) of this subsection.

90 (3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as  
91 annually determined, by May 1 of each year, by the Insurance Commissioner to produce \$45  
92 million annually, of each policyholder's periodic premium amount for workers' compensation

93 insurance: *Provided*, That the surcharge rate on policies issued or renewed on or after July 1,  
94 2008, shall be nine percent of the premium collected plus the total of all premium discounts based  
95 on deductible provisions that were applied.

96 (B) By May 1 each year, the self-insured employer community shall be assessed a  
97 cumulative total of \$9 million. The methodology for the assessment shall be fair and equitable and  
98 determined by exempt legislative rule issued by the Industrial Council. The amount collected  
99 pursuant to this subdivision shall be remitted to the Insurance Commissioner for deposit in the  
100 Workers' Compensation Debt Reduction Fund created in section five, article two-d of this chapter:  
101 *Provided*, That, notwithstanding any provision of this subdivision or any other provision of this  
102 code to the contrary, if the budget shortfall, as determined by the state Budget Office as of  
103 December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order,  
104 redirect deposits of the amount collected pursuant to this subdivision, for any period commencing  
105 after February 29, 2016, and ending before July 1, 2016, to the General Revenue Fund, instead  
106 of to the fund otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this  
107 code or in any other provision of this code: *Provided, however*, That, notwithstanding any  
108 provision of this subdivision or any other provision of this code to the contrary, the Governor may,  
109 by Executive Order, redirect one-half of the deposits of the amount collected pursuant to this  
110 subdivision, for any period commencing after June 30, 2016, and ending before July 1, 2017, to  
111 the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in  
112 article two-d, chapter twenty-three of this code or in any other provision of this code, until  
113 certification of the Governor to the Legislature that an independent actuary has determined that  
114 the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been  
115 paid or provided for in its entirety: *Provided further*, That, notwithstanding any provision of this  
116 subdivision or any other provision of this code to the contrary, the Governor may, by Executive  
117 Order, redirect seventy-five percent of the deposits of the amount collected pursuant to this  
118 subdivision, for any period commencing after June 30, 2017, and ending before July 1, 2018, to

119 the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in  
120 article two-d, chapter twenty-three of this code or in any other provision of this code, until  
121 certification of the Governor to the Legislature that an independent actuary has determined that  
122 the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been  
123 paid or provided for in its entirety: *And provided further*, That, notwithstanding any provision of  
124 this subdivision or any other provision of this code to the contrary, seventy-five percent of the  
125 deposits of the amount collected pursuant to this subdivision, for any period commencing after  
126 June 30, 2018, and ending before January 1, 2019, shall be deposited into the General Revenue  
127 Fund instead of to the funds otherwise mandated in this subdivision, in article two-d, chapter  
128 twenty-three of this code or in any other provision of this code, until certification of the Governor  
129 to the Legislature that an independent actuary has determined that the unfunded liability of the  
130 Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its  
131 entirety.

132 (4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump  
133 sum transfer of \$40 million generated from the surcharges assessed pursuant to paragraph (B),  
134 subdivision (1) of this subsection and subdivision (2) of this subsection to the Bureau of  
135 Employment Programs' Commissioner for deposit with the Secretary of the Treasury of the United  
136 States as a credit of this state in the Unemployment Trust Fund Account maintained pursuant to  
137 section four, article eight, chapter twenty-one-a of this code.

138 (g) The new premiums surcharge imposed by paragraphs (A) and (B), subdivision (3),  
139 subsection (f) of this section sunset and are not collectible with respect to workers' compensation  
140 insurance premiums paid when the policy is renewed on or after the first day of the month  
141 following the month in which the Governor certifies to the Legislature that the revenue bonds  
142 issued pursuant to article two-d of this chapter have been retired and that the unfunded liability of  
143 the Old Fund has been paid or has been provided for in its entirety, whichever occurs last.

144           (h) Notwithstanding any other provisions of this section to the contrary, after December  
145 31, 2018, no surcharges may be assessed under subdivision (3), subsection (f) of this section or  
146 subsection (g) of this section. Except as otherwise provided in this subsection, the provisions of  
147 subdivision (3), subsection (f) of this section and subsection (g) of this section are terminated and  
148 shall be of no force or effect beginning on and after January 1, 2019: *Provided*, That liability for  
149 surcharges assessed under subdivision (3), subsection (f) of this section for periods prior to  
150 January 1, 2019, shall continue until paid.



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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2018.

.....  
*Governor*