

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 362

[Originating in the Committee on Finance; reported on

March 20, 2017]

1 A BILL to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §29-22A-10d and §29-22A-10e of said code, all relating to authorizing
3 the redirection of certain amounts to the General Revenue Fund; authorizing the
4 redirection of amounts collected from certain surcharges and assessments on workers'
5 compensation insurance policies for periods prior to July 1, 2018; changing the amount of
6 premium surcharge to be paid by the self-insured employer community into the Workers'
7 Compensation Debt Reduction Fund; and authorizing the redirection of amounts collected
8 from certain deposits of revenues from net terminal income for periods prior to July 1,
9 2018.

Be it enacted by the Legislature of West Virginia:

1 That §23-2C-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that §29-22A-10d and §29-22A-10e of said code be amended and reenacted, all
3 to read as follows:

CHAPTER 23. WORKERS' COMPENSATION.

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 employer's 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~~ \$6 million. The methodology for the assessment shall be fair and
98 equitable and determined by exempt legislative rule issued by the Industrial Council. The amount
99 collected pursuant to this subdivision shall be remitted to the Insurance Commissioner for deposit
100 in the Workers' Compensation Debt Reduction Fund created in section five, article two-d of this
101 chapter: *Provided*, That notwithstanding any provision of this subdivision or any other provision
102 of this 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 provision
108 of this subdivision or any other provision of this code to the contrary, the Governor may, by
109 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.

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

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery fund.

1 (a) Notwithstanding any provision of subsection (b), section ten of this article to the
2 contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission
3 may transfer up to \$9 million as actual costs and expenses to the Licensed Racetrack
4 Modernization Fund.

5 (b) Notwithstanding any provision of subsection (c), section ten of this article to the
6 contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each
7 distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5)
8 and (7), subsection (c), section ten of this article, shall be reduced by one hundred percent.
9 Payments shall not be made pursuant to section ten of this article, other than those excepted by
10 this subsection, and are made in lieu thereof in an amount to be determined by appropriation from
11 the State Excess Lottery Revenue Fund.

12 (c) The total amount of reductions resulting from subsection (b) of this section shall be
13 paid into the State Excess Lottery Revenue Fund, created by section eighteen-a, article twenty-
14 two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter,
15 distributions to be made pursuant to subdivisions (2) and (5), subsection (c), section ten of this
16 article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid
17 into the State Excess Lottery Revenue Fund.

18 (d) Notwithstanding any other provision of this code to the contrary, for the fiscal year
19 beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess
20 Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance
21 with appropriations.

22 (e) Prior to payment of any appropriation made pursuant to this section, debt service
23 payments payable from the State Excess Lottery Fund shall first be paid in accordance with the
24 provisions of sections eighteen-a, eighteen-d and eighteen-e, article twenty-two of this chapter
25 and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this
26 chapter.

27 (f) Notwithstanding any other provision of this code to the contrary, after payment of debt
28 service from the State Excess Lottery Revenue Fund, all other distributions required by section
29 eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this
30 section shall be paid on a pro rata basis.

31 (g)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the
32 provisions of paragraph (B), subdivision (9), subsection (c), section ten of this article, upon
33 certification of the Governor to the Legislature that an independent actuary has determined that
34 the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been
35 paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt
36 Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (c), section ten of this
37 article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject
38 to appropriation.

39 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision
40 of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision
41 of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of
42 December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order,
43 redirect deposits of revenues derived from net terminal income imposed under this article, for any
44 period commencing after February 29, 2016 and ending before July 1, 2016, to the General
45 Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter
46 twenty-three of this code or in any other provision of this code.

47 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
48 paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of
49 this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits
50 of revenues derived from net terminal income imposed under this article, for any period
51 commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund,
52 instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of
53 this code or in any other provision of this code, until certification of the Governor to the Legislature
54 that an independent actuary has determined that the unfunded liability of the Old Fund, as defined
55 in chapter twenty-three of this code, has been paid or provided for in its entirety.

56 (C) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
57 paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of
58 this code to the contrary, the Governor may, by Executive Order, redirect seventy-five percent of
59 the deposits of revenues derived from net terminal income imposed under this article, for any
60 period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue
61 Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-
62 three of this code or in any other provision of this code, until certification of the Governor to the
63 Legislature that an independent actuary has determined that the unfunded liability of the Old
64 Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

**§29-22A-10e. Changes in distribution of excess net terminal income; distributions from
excess lottery fund.**

1 (a) Notwithstanding any provision of subsection (a), section ten-b of this article to the
2 contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each
3 distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5)
4 and (7), subsection (a), section ten-b of this article, shall be reduced by one hundred percent.
5 Payments shall not be made pursuant to section ten-b of this article, other than those excepted
6 by this subsection, and are made in lieu thereof in an amount to be determined by appropriation
7 from the State Excess Lottery Revenue Fund.

8 (b) The total amount of reductions resulting from subsection (a) of this section shall be
9 paid into the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-
10 two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter,
11 distributions to be made pursuant to subdivisions (2) and (5), subsection (a), section ten-b of this
12 article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid
13 into the State Excess Lottery Revenue Fund.

14 (c) Notwithstanding any other provision of this code to the contrary, for the fiscal year
15 beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess
16 Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance
17 with appropriations.

18 (d) Prior to payment of any appropriation made pursuant to this section, debt service
19 payments payable from the State Excess Lottery Fund shall first be paid in accordance with the
20 provisions of sections eighteen-a, eighteen-d, and eighteen-e, article twenty-two of this chapter
21 and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this
22 chapter.

23 (e) Notwithstanding any other provision of this code to the contrary, after payment of debt
24 service from the State Excess Lottery Revenue Fund, all other distributions required by section
25 eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this
26 section shall be paid on a pro rata basis.

27 (f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the
28 provisions of paragraph (B), subdivision (9), subsection (a), section ten-b of this article, upon
29 certification of the Governor to the Legislature that an independent actuary has determined that
30 the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been
31 paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt
32 Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (a), section ten-b of this
33 article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject
34 to appropriation.

35 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision
36 of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision
37 of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of
38 December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order,
39 redirect deposits of revenues derived from net terminal income imposed under this article, for any
40 period commencing after February 29, 2016 and ending before July 1, 2016, to the General
41 Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter
42 twenty-three of this code or in any other provision of this code.

43 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
44 paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision
45 of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the
46 deposits of revenues derived from net terminal income imposed under this article, for any period
47 commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund,
48 instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of
49 this code or in any other provision of this code, until certification of the Governor to the Legislature
50 that an independent actuary has determined that the unfunded liability of the Old Fund, as defined
51 in chapter twenty-three of this code, has been paid or provided for in its entirety.

52 (C) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
53 paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision
54 of this code to the contrary, the Governor may, by Executive Order, redirect seventy-five percent
55 of the deposits of revenues derived from net terminal income imposed under this article, for any
56 period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue
57 Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-
58 three of this code or in any other provision of this code, until certification of the Governor to the
59 Legislature that an independent actuary has determined that the unfunded liability of the Old
60 Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

NOTE: The purpose of this bill is to permit the redirection of the deposit of revenues collected from certain surcharges and assessments on workers' compensation insurance policies and derived from net terminal income funds by the Governor through executive order to the General Revenue Fund.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.