

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4296

BY DELEGATE WESTFALL

[Introduced January 20, 2022; referred to the
Committee on the Judiciary]

1 A BILL 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. Workers' Compensation Commission created; Regulation of the workers' compensation system by the Insurance Commissioner; findings.

1 (a) ~~The Legislature finds that a deficit exists in the Workers' Compensation Fund of such~~
2 ~~critical proportions that it constitutes an imminent threat to the immediate and long term solvency~~
3 ~~of the fund and constitutes a substantial deterrent to the economic development of this state. The~~
4 ~~Legislature further finds that addressing the workers' compensation crisis requires the efforts of~~
5 ~~all persons and entities involved and resolution of the crisis is in the best interest of the public.~~
6 ~~Modification to the rate system, alteration of the benefit structure, improvement of current~~
7 ~~management practices and changes in perception must be merged into a unified effort to make~~
8 ~~the workers' compensation system viable and solvent through the mutualization of the system~~
9 ~~and the opening of the market to private workers' compensation insurance carriers. It As~~
10 ~~recognized by the Supreme Court of Appeals of West Virginia in Wampler Foods, Inc. v. Workers'~~
11 ~~Compensation Division, 216 W.Va. 129, 602 S.E.2d 805 (2004), and in recognition that a deficit~~
12 ~~of such critical proportions existed in the workers' compensation fund that it constituted an~~
13 ~~immediate and long term threat to the solvency of the fund, as well as a substantial deterrent to~~
14 ~~the economic development of this state, and further that lawmakers are uniquely charged with the~~
15 ~~responsibility for passing laws designed to cure such serious concerns and that substantial~~
16 ~~deference is accorded to legislative actions aimed at doing so, it was and remains the intent of~~
17 ~~the Legislature that the amendments to this chapter enacted in the year 2003 be applied from the~~
18 ~~date upon which the enactment was made effective by the Legislature. ~~The Legislature finds that~~~~
19 ~~an emergency exists as a result of the combined effect of this deficit, other state budgetary deficits~~
20 ~~and liabilities and other grave social and economic circumstances currently confronting the state~~
21 ~~and that unless the changes provided by the enactment of the amendments to this chapter, as~~
22 ~~well as other legislation designed to address the problem are made effective immediately, the~~
23 ~~fiscal stability of this state will suffer irreparable harm. Accordingly, the Legislature finds that the~~
24 ~~need of the citizens of this state for the protection of the State Treasury and the solvency of the~~

25 ~~Workers' Compensation Funds requires the limitations on any expectations that may have arisen~~
26 ~~from prior enactments of this chapter~~

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

41 ~~(c) The "Workers' Compensation Division of the Bureau of Employment Programs" is, on~~
42 ~~or after October 1, 2003, reestablished, reconstituted and continued as the Workers'~~
43 ~~Compensation Commission, an agency of the state. The purpose of the commission is to ensure~~
44 ~~the fair, efficient and financially stable administration of the workers' compensation system of the~~
45 ~~State of West Virginia. The powers and duties heretofore imposed upon the Workers'~~
46 ~~Compensation Division and the Commissioner of the Bureau of Employment Programs as they~~
47 ~~relate to workers' compensation are hereby transferred to and imposed upon the Workers'~~
48 ~~Compensation Commission and its executive director in the manner prescribed by this chapter.~~

49 (d) It is the intent of the Legislature that the transfer of the administration of the workers'
50 compensation system of this state from the Workers' Compensation Division under the

51 ~~Commissioner of the Bureau of Employment Programs to the Workers' Compensation~~
52 ~~Commission under its executive director and the workers' compensation board of managers is to~~
53 ~~become effective October 1, 2003. Any provisions of the enactment of Enrolled Senate Bill No.~~
54 ~~2013 in the year 2003 relating to the transfer of the administration of the workers' compensation~~
55 ~~system of this state that conflict with the intent of the Legislature as described in this subsection~~
56 ~~shall, to that extent, become operative on October 1, 2003, and until that date, prior enactments~~
57 ~~of this code in effect on the effective date of Enrolled Senate Bill No. 2013 relating to the~~
58 ~~administration of the workers' compensation system of this state, whether amended and~~
59 ~~reenacted or repealed by the passage of Enrolled Senate Bill No. 2013, have full force and effect.~~
60 ~~All provisions of the enactment of Enrolled Senate Bill No. 2013 in the year 2003 relating to~~
61 ~~matters other than the transfer of the administration of the workers' compensation system of this~~
62 ~~state shall become operative on the effective date of that enactment, unless otherwise specifically~~
63 ~~provided in that enactment~~

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

~~§23-1-1b. Executive Director; qualifications; oath; seal; removal; powers~~ Powers and duties of Insurance Commissioner.

1 (a) ~~The Executive Director shall be hired by the board of managers for a term not to exceed~~
2 ~~five years and may be retained based on overall performance for additional terms: *Provided*, That~~
3 ~~the Executive Director of the Division of Workers' Compensation on the date of the enactment of~~

4 ~~this section in the year 2003 shall serve as the initial Executive Director of the Commission and~~
5 ~~shall receive the same salary and benefits as received as the Executive Director of the Division~~
6 ~~of Workers' Compensation through and until the board of managers establishes his or her salary~~
7 ~~and benefits as the Executive Director of the Commission. The position of Executive Director shall~~
8 ~~be full-time employment. Except for the initial Executive Director, candidates for the position of~~
9 ~~Executive Director shall have a minimum of a bachelor of arts or science degree from an~~
10 ~~accredited four-year college or university in one or more of the following disciplines: Finance;~~
11 ~~economics; insurance administration; law; public administration; accounting; or business~~
12 ~~administration. Candidates for the position of Executive Director will be considered based on their~~
13 ~~demonstrated education, knowledge and a minimum of ten years' experience in the areas of~~
14 ~~workers' compensation, insurance company management, administrative and management~~
15 ~~experience with an organization comparable in size to the Workers' Compensation Commission~~
16 ~~or any relevant experience which demonstrates an ability to effectively accomplish the purposes~~
17 ~~of this chapter.~~

18 ~~(b) The Executive Director shall not be a candidate for or hold any other public office or~~
19 ~~trust, nor shall he or she be a member of a political committee. If he or she becomes a candidate~~
20 ~~for a public office or becomes a member of a political committee, his or her office as Executive~~
21 ~~Director shall be immediately vacated.~~

22 ~~(c) The Executive Director, before entering upon the duties of his or her office, shall take~~
23 ~~and subscribe to the oath prescribed by section five, article IV of the state Constitution. The oath~~
24 ~~shall be filed with the Secretary of State.~~

25 ~~(d) The Executive Director shall have an official seal for the authentication of orders and~~
26 ~~proceedings, upon which seal shall be engraved the words "West Virginia Workers'~~
27 ~~Compensation Commission" and any other design prescribed by the board of managers. The~~
28 ~~courts in this state shall take judicial notice of the seal of the Commission and in all cases copies~~

29 of orders, proceedings or records in the office of the West Virginia Workers' Compensation
30 Commission are equal to the original in evidence.

31 (e) ~~The Executive Director shall not be a member of the board of managers.~~

32 (f) ~~The Executive Director shall serve until the expiration of his or her term, resignation or~~
33 ~~until removed by a two thirds vote of the full board of managers. The board of managers and the~~
34 ~~Executive Director may, by agreement, terminate the term of employment at any time~~

35 (g) ~~The Executive Director~~ Insurance Commissioner shall have overall management
36 responsibility and administrative control and supervision within the Workers' Compensation
37 Commission and has the power and duty to:

38 (1) ~~Establish with the approval of the board of managers the overall administrative policy~~
39 ~~of the Commission for the purposes of this chapter~~ operating guidelines and policies designed to
40 ensure the effective regulation of the workers' compensation insurance market in West Virginia
41 and effectuate the provisions of this chapter;

42 (2) ~~Employ, direct, and supervise all employees required in the connection with the~~
43 ~~performance of the duties assigned to the Commission~~ Insurance Commissioner by this chapter;
44 ~~and fix the compensation of the employees in accordance with the provisions of article six, chapter~~
45 ~~twenty nine of this code: *Provided*, That the Executive Director shall identify which members of~~
46 ~~the staff of the Workers' Compensation Commission shall be exempted from the salary schedules~~
47 ~~or pay plan adopted by the state personnel board and further identify such staff members by job~~
48 ~~classification or designation, together with the salary or salary ranges for each such job~~
49 ~~classification or designation and shall file this information with the Director of the Division of~~
50 ~~Personnel no later than December 31, 2003, and thereafter as changes are made or at least~~
51 ~~annually: *Provided, however*, That, effective July 1, 2006, if the Commission has not been~~
52 ~~terminated or otherwise discontinued, all employees of the Commission shall be exempt and~~
53 ~~otherwise not under the jurisdiction of the provisions of the statutes, rules and regulations of the~~
54 ~~classified service set forth in article six, chapter twenty nine of this code and article six a of said~~

55 ~~chapter and are afforded no protections, rights or access to procedures set forth in said provision.~~
56 ~~All commission employees shall be employees at will unless his or her employment status is~~
57 ~~altered by an express, written employment contract executed on behalf of the Commission and~~
58 ~~the employee. The Commission and its employees shall be exempt and otherwise not under the~~
59 ~~jurisdiction of the state personnel board, the department of personnel, or any other successor~~
60 ~~agency, and their statutes, rules and regulations~~

61 (3) Reorganize the work of the ~~Commission~~ Insurance Commissioner, its divisions,
62 sections, and offices to the extent necessary to achieve the most efficient performance of its
63 functions. ~~All persons employed by the workers' compensation division in positions that were~~
64 ~~formerly supervised and directed by the Commissioner of the Bureau of Employment Programs~~
65 ~~under chapter twenty one a of this code are hereby assigned and transferred in their respective~~
66 ~~classifications to the Workers' Compensation Commission effective October 1, 2003. Further, the~~
67 ~~Executive Director may select persons that are employed by the Bureau of Employment Programs~~
68 ~~on the effective date of the enactment of this section in the year 2003 to be assigned and~~
69 ~~transferred to the Workers' Compensation Commission in their respective classifications, such~~
70 ~~assignment and transfer to take effect no later than December 31, 2003. Employees in the~~
71 ~~classified service who have gained permanent status as of the effective date of this article will not~~
72 ~~be subject to further qualifying examination in their respective classifications by reason of any~~
73 ~~transfer required by the provisions of this subdivision. Due to the emergency currently existing at~~
74 ~~the Commission and the urgent need to develop fast, efficient claims processing, management~~
75 ~~and administration, the Executive Director is hereby granted authority to reorganize internal~~
76 ~~functions and operations and to delegate, assign, transfer, combine, establish, eliminate and~~
77 ~~consolidate responsibilities and duties to and among the positions transferred under the authority~~
78 ~~of this subdivision. The Division of Personnel shall cooperate fully by assisting in all personnel~~
79 ~~activities necessary to expedite all changes for the Commission. The Executive Director is hereby~~
80 ~~granted authority to reorganize internal functions and operations and to delegate, assign, transfer,~~

81 ~~combine, establish, eliminate and consolidate responsibilities and duties to and among the~~
82 ~~positions transferred under the authority of this subdivision. The Division of Personnel shall~~
83 ~~cooperate fully by assisting in all personnel activities necessary to expedite all changes for the~~
84 ~~Commission and shall otherwise continue to provide all necessary administrative support to the~~
85 ~~Commission in connection with the Commission's personnel needs until the company established~~
86 ~~in article two c of this chapter becomes operational. Nothing contained in this subdivision shall be~~
87 ~~construed to either abridge the rights of employees within the classified service of the state to the~~
88 ~~procedures and protections set forth in article six, chapter twenty nine of this code or to preclude~~
89 ~~the reclassification or reallocation of positions in accordance with procedures set forth in said~~
90 ~~article;~~

91 ~~(4) Exempt no more than 25 of any of the newly created positions from the classified~~
92 ~~service of the state, the employees of which positions shall serve at the will and pleasure of the~~
93 ~~Executive Director. The Executive Director shall report all exemptions made under this subdivision~~
94 ~~to the Director of the Division of Personnel no later than January 1, 2004, and thereafter as the~~
95 ~~Executive Director determines to be necessary;~~

96 ~~(5) With the advice and approval of the board of managers, propose operating guidelines~~
97 ~~and policies to standardize administration, expedite commission business and promote the~~
98 ~~efficiency of the services provided by the Commission;~~

99 ~~(6) Prepare and submit to the board of managers information the board requires for~~
100 ~~classifications of occupations or industries; the basis for premium rates, taxes, surcharges and~~
101 ~~assessment for administrative charges, for assessments related to loss experience, for~~
102 ~~assessments of prospective risk exposure, for assessments of deficit management and deficit~~
103 ~~reduction costs incurred, for other deficit management and deficit reduction assessments, for~~
104 ~~rules and systems of rating, rate revisions and merit rating for employers covered by this chapter;~~
105 ~~and information regarding the extent, degree and amount of subsidization between the~~

106 ~~classifications. The Executive Director shall obtain, prepare and submit any other information the~~
107 ~~board of managers requires for the prompt and efficient discharge of its duties~~

108 ~~(7) (4) Keep accurate and complete accounts and records necessary to the collection,~~
109 ~~administration, and distribution of the workers' compensation funds created in §23-2C-6 of this~~
110 ~~code;~~

111 ~~(8) Sign and execute in the name of the state, by "The Workers' Compensation~~
112 ~~Commission", any contract or agreement;~~

113 ~~(9) Make recommendations and an annual report to the Governor concerning the~~
114 ~~condition, operation and functioning of the Commission;~~

115 ~~(10) (5) Invoke any legal or special remedy for the enforcement of orders or the provisions~~
116 ~~of this chapter;~~

117 ~~(11) Prepare and submit for approval to the board of managers a budget for each fiscal~~
118 ~~year, including estimates of the costs and necessary expenditures of the Commission in the~~
119 ~~discharge of all duties imposed by this chapter as well as the costs of furnishing office space to~~
120 ~~the officers and employees of the Commission~~

121 ~~(12) (6) Ensure that all employees of the Commission Insurance Commissioner follow the~~
122 ~~orders, operating guidelines, and policies of the Commission agency as they relate to the~~
123 ~~Commission's agency's overall policymaking, management, and adjudicatory duties under this~~
124 ~~chapter;~~

125 ~~(13) (7) Delegate all powers and duties vested in the Executive Director Insurance~~
126 ~~Commissioner to his or her appointees and employees: but Provided, That the Executive Director~~
127 ~~Insurance Commissioner is responsible for their acts;~~

128 ~~(14) Provide at commission expense a program of continuing professional, technical and~~
129 ~~specialized instruction for the personnel of the Commission. The Executive Director shall consult~~
130 ~~with and report at least annually to the Legislative Oversight Commission on Workforce~~

131 ~~Investment for Economic Development to obtain the most appropriate training using all available~~
132 ~~resources~~

133 ~~(15)~~ (8)(A) Contract or employ counsel to perform all legal services for the ~~Commission~~
134 Insurance Commissioner including, but not limited to, representing the ~~Executive Director, board~~
135 ~~of managers and commission~~ Insurance Commissioner in any administrative proceeding and in
136 any state or federal court. Additionally, the ~~Commission~~ Insurance Commissioner may, but shall
137 not be required to, call upon the Attorney General for legal assistance and representation as
138 provided by law. The Attorney General shall not approve or exercise authority over in-house
139 counsel or contract counsel hired pursuant to this section;

140 (B) In addition to the authority granted by this section to the ~~Executive Director~~ Insurance
141 Commissioner and notwithstanding any provision to the contrary elsewhere in this code, use any
142 attorney regularly employed by the ~~Commission~~ Insurance Commissioner or the Office of the
143 Attorney General to represent the ~~Commission, the Executive Director or the board of managers~~
144 Insurance Commissioner in any matter arising from the performance of ~~its~~ his or her duties or the
145 execution of ~~its~~ his or her powers under this chapter. ~~In addition, the Executive Director, with the~~
146 ~~approval of the board of managers, may retain counsel for any purpose in the administration of~~
147 ~~this chapter relating to the collection of any amounts due from employers to the Commission:~~
148 ~~Provided, That the allocation of resources for the purpose of any collections shall be pursuant to~~
149 ~~the plan developed by the board of managers. The board of managers shall solicit proposals from~~
150 ~~counsel who are interested in representing the Commission under the terms of this subdivision.~~
151 ~~Thereafter, the board of managers shall select any attorneys it determines necessary to pursue~~
152 ~~the collection objectives of this subdivision:~~

153 ~~(i) Payment to retained counsel may either be hourly or by other fixed fee, or as determined~~
154 ~~by the court or administrative law judge as provided in this section. A contingency fee payable~~
155 ~~from the amount recovered by judgment or settlement for the Commission is only permitted, to~~

156 ~~the extent not prohibited by federal law, when the assets of a defendant or respondent are~~
157 ~~depleted so that a full recovery plus attorneys' fees is not possible;~~

158 ~~(ii) In the event that any collections action, other than a collections action against a~~
159 ~~claimant, initiated either by retained counsel or other counsel on behalf of the Commission results~~
160 ~~in a judgment or settlement in favor of the Commission, the court or, if there was no judicial~~
161 ~~component to the action, the administrative law judge, shall determine the amount of attorneys'~~
162 ~~fees that shall be paid by the defendants or respondents to the retained or other counsel~~
163 ~~representing the Commission. If the court is to determine the amount of attorneys' fees, it shall~~
164 ~~include in its determination the amount of fee that should be paid for the representation of the~~
165 ~~Commission in pursuing the administrative component, if any, of the action. The amount so paid~~
166 ~~shall be fixed by the court or the administrative law judge in an amount no less than twenty percent~~
167 ~~of its recovery. Any additional amount of attorneys' fees shall be determined by use of the~~
168 ~~following factors:~~

169 ~~(I) The counsel's normal hourly rate or, if the counsel is an employee of the Commission~~
170 ~~or is an employee of the Office of the Attorney General, an hourly rate the court or the~~
171 ~~administrative law judge determines to be customary based upon the attorney's experience and~~
172 ~~skill level;~~

173 ~~(II) The number of hours actually expended on the action;~~

174 ~~(III) The complexity of the issues involved in the action;~~

175 ~~(IV) The degree of risk involved in the case with regard to the probability of success or~~
176 ~~failure;~~

177 ~~(V) The overhead costs incurred by counsel with regard to the use of paralegals and other~~
178 ~~office staff, experts and investigators; and~~

179 ~~(VI) The public purpose served or public objective achieved by the attorney in obtaining~~
180 ~~the judgment or settlement on behalf of the Commission;~~

181 ~~(iii) Notwithstanding the provisions of paragraph (B) of this subdivision, if the Commission~~
182 ~~and the defendants or respondents to any administrative or judicial action settle the action, the~~
183 ~~parties may negotiate a separate settlement of attorneys' fees to be paid by the defendants or~~
184 ~~respondents above and beyond the amount recovered by the Commission. In the event that a~~
185 ~~settlement of attorneys' fees is made, it must be submitted to the court or administrative law judge~~
186 ~~for approval;~~

187 ~~(iv) Any attorney regularly employed by the Commission or by the Office of the Attorney~~
188 ~~General may not receive any remuneration for his or her services other than the attorney's regular~~
189 ~~salary. Any attorneys' fees awarded for an employed attorney are payable to the Commission~~

190 ~~(16) (9) Propose rules for promulgation by the board of managers approval by the~~
191 ~~Industrial Council created in §23-2C-5 of this code, under which agencies of this state shall revoke~~
192 ~~or refuse to grant, issue, or renew any contract, license, permit, certificate, or other authority to~~
193 ~~conduct a trade, profession, or business to or with any employing unit whose account who is in~~
194 ~~default on the Default List as set forth in §23-2C-19(d)(1) of this code or listed in the Employer~~
195 ~~Violator System with the Commission with regard to the administration of this chapter Insurance~~
196 ~~Commissioner. The term "agency" includes any unit of state government such as officers,~~
197 ~~agencies, divisions, departments, boards, commissions, authorities, or public corporations. An~~
198 ~~employing unit is not in default if it has entered into a repayment agreement with the Commission~~
199 ~~Insurance Commissioner and remains in compliance with its obligations under the repayment~~
200 ~~agreements;~~

201 (A) The rules shall provide that, before granting, issuing, or renewing any contract, license,
202 permit, certificate, or other authority to conduct a trade, profession, or business to or with any
203 employing unit, the designated agencies shall review a list or lists provided by the Commission
204 Insurance Commissioner of employers that are in default. If the employing unit's name is not on
205 the list, the agency, unless it has actual knowledge that the employing unit is in default with the
206 Commission, may grant, issue, or renew the contract, license, permit, certificate, or other authority

207 to conduct a trade, profession, or business. The list may be provided to the agency in the form of
208 a computerized database or databases that the agency can access. Any objections to the refusal
209 to issue or renew shall be reviewed under the appropriate provisions of this chapter. The
210 prohibition against granting, issuing, or renewing any contract, license, permit, certificate, or other
211 authority under this subdivision shall remain in full force and effect as promulgated under §21A-
212 2-6 of this code until the rules required by this ~~subsection~~ subdivision are promulgated and in
213 effect;

214 (B) The rules shall also provide a procedure allowing any agency or interested person,
215 after being covered under the rules for at least one year, to petition the ~~Commission~~ Insurance
216 Commissioner to be exempt from the provisions of the rules;

217 ~~(17)~~ (10) Deposit to the credit of the appropriate special revenue account or fund,
218 notwithstanding any other provision of this code and to the extent allowed by federal law, all
219 amounts of delinquent payments or overpayments, interest, and penalties thereon and attorneys'
220 fees and costs collected under the provisions of this chapter. The amounts collected shall not be
221 treated by the Auditor or Treasurer as part of the general revenue of the state;

222 ~~(18) Recommend for approval of the board of managers rules for the administration of~~
223 ~~claims management by self-insured employers and third-party administrators including regulation~~
224 ~~and sanctions for the rejection of claims and for maintaining claim records and ensuring access~~
225 ~~to all claim records by interested claimants, claimant representatives, the Commission and the~~
226 ~~Office of Judges;~~

227 ~~(19) Recommend for approval of the board of managers, rules to eliminate the ability of~~
228 ~~an employer to avoid an experience modification factor by virtue of a reorganization of a business;~~

229 ~~(20) Submit for approval of the board of managers rules setting forth procedures for~~
230 ~~auditing and investigating employers, including employer premium audits and including auditing~~
231 ~~and investigating programs of self-insured employers and third-party administrators, employees,~~
232 ~~health care providers and medical and vocational rehabilitation service providers~~

233 ~~(24)~~ (11) Regularly audit or examine and monitor programs established by self-insured
234 employers or third-party administrators under this chapter to ensure compliance with the
235 Commission's Insurance Commissioner's rules and the law;

236 ~~(22)~~ (12) ~~Facilitate the transfer of the fraud investigation and prosecution unit, along with~~
237 ~~the assets necessary to support the functions being performed, to the Insurance Commissioner.~~
238 ~~This transfer shall be completed by July 1, 2005. This unit~~ Oversee the Insurance Fraud Unit that
239 has the responsibility and authority for investigating and controlling insurance fraud and workers'
240 compensation ~~fraud of the Workers' Compensation System of~~ in the State of West Virginia and
241 ~~shall perform such other duties as may be assigned to it by the Insurance Commissioner as set~~
242 ~~forth in §33-41-1 et seq. of this code.~~ The fraud unit shall be under the supervision of an inspector
243 general, who shall be appointed by the Insurance Commissioner. Nothing in this section shall
244 preclude the Commission or, when applicable, the company created in article two c of this chapter
245 and other private carriers from independently investigating and controlling abuse. ~~and exercising~~
246 ~~the powers granted to the Commission to address and eliminate abuse under this chapter. The~~
247 ~~Executive Director may select persons that are assigned to the fraud and abuse unit on the~~
248 ~~effective date of the enactment of this section to be assigned and remain employees of the~~
249 ~~Workers' Compensation Commission. The Commission shall determine its fiscal year 2006~~
250 ~~budget for the fraud investigation and prosecution unit and shall make advanced quarterly~~
251 ~~payments to the Insurance Commissioner during fiscal year 2006 for the actual operational~~
252 ~~expenses incurred as a direct result of this transfer: *Provided*, That the payments and expenses~~
253 ~~shall be reconciled prior to the final fiscal year transfer and any unexpended amount shall be~~
254 ~~deducted from the final quarter's payment. This reimbursement methodology shall repeat for fiscal~~
255 ~~year 2007. Any amounts transferred under this section to the Insurance Commissioner shall be~~
256 ~~appropriated by the Legislature. The Commission's inspector general shall serve as the initial~~
257 ~~inspector general for the Insurance Commissioner~~

258 (A) The inspector general shall, with the consent and advice of the ~~Executive Director~~
259 Insurance Commissioner, employ all personnel as necessary for the institution, development and
260 finalization of procedures and investigations which serve to ensure that only necessary and proper
261 workers' compensation benefits and expenses are paid to or on behalf of injured employees. ~~and~~
262 ~~to insure employers subscribe to and pay the proper premium to the West Virginia Workers'~~
263 ~~Compensation Commission~~ Qualification, compensation, and personnel practice relating to the
264 employees of the fraud and abuse unit, including that of the position of inspector general, shall be
265 governed by the provisions of the statutes and rules of the classified service pursuant to §29-6-1,
266 *et seq.* of this code. The inspector general shall supervise all personnel; ~~which collectively shall~~
267 ~~be referred to in this chapter as the fraud and abuse unit~~

268 (B) The fraud ~~and abuse~~ unit shall have the following powers and duties:

269 (i) ~~The fraud and abuse unit shall propose for promulgation by the board of managers~~
270 ~~rules for determining the existence of fraud and abuse as it relates to the Workers' Compensation~~
271 ~~System in West Virginia;~~

272 (ii) ~~The fraud and abuse unit will be responsible for the initiation, development, review and~~
273 ~~proposal for promulgation by the board of managers of rules regarding the existence of fraud and~~
274 ~~abuse as it relates to the Workers' Compensation System in West Virginia~~

275 (iii) (i) ~~The fraud and abuse unit will take action to identify and prevent and discourage any~~
276 ~~and all fraud and abuse;~~

277 (iv) (ii) ~~The fraud and abuse unit, in cases of criminal fraud, has the authority to review~~
278 ~~and prosecute those cases for violations of §61-3-24e, §61-3-24f, §61-3-24g, and §61-3-24h of~~
279 ~~this code §23-1-1 et seq., §33-1-1 et seq., §61-3-1 et seq., and §61-4-5 of this code,~~ as well as
280 any other criminal statutes that may be applicable. In addition, the fraud ~~and abuse~~ unit not only
281 has the authority to prosecute and refer cases involving criminal fraud to appropriate state
282 authorities for prosecution, but it also has the authority, and is encouraged, to cooperate with the
283 appropriate federal authorities for review and possible prosecution, by either-state or federal

284 agencies, of cases involving criminal fraud concerning the Workers' Compensation System in
285 West Virginia; and

286 ~~(v) The fraud and abuse unit, in cases which do not meet the definition of criminal fraud,~~
287 ~~but would meet a reasonable person's definition of an abuse of the Workers' Compensation~~
288 ~~System, shall take the appropriate action to discourage and prevent such abuse. Furthermore,~~
289 ~~the fraud investigation and abuse unit shall assist the Commission to develop evidence of fraud~~
290 ~~or abuse which can be used pursuant to the provisions of this chapter to suspend, and where~~
291 ~~appropriate, terminate, a claimant's benefits. In addition, evidence developed pursuant to these~~
292 ~~provisions can be used in hearings before the office of judges on protests to commission decisions~~
293 ~~terminating, or not terminating, temporary total disability benefits; and~~

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

298 (C) Specific personnel, designated by the inspector general, shall be permitted to operate
299 vehicles owned or leased for the state displaying Class A registration plates;

300 (D) Notwithstanding any provision of this code to the contrary, specific personnel
301 designated by the inspector general may carry handguns in the course of their official duties after
302 meeting specialized qualifications established by the Governor's Committee on Crime,
303 Delinquency and Correction, which qualifications shall include the successful completion of
304 handgun training provided to law-enforcement officers by the West Virginia State Police:
305 *Provided*, That nothing in this subsection shall be construed to include the personnel so
306 designated by the inspector general to carry handguns within the meaning of the term law-
307 enforcement official as defined in §30-29-1 of this code;

308 (E) The fraud ~~and abuse~~ unit is not subject to any requirement of §6-9a-1 *et seq.* of this
309 code and the investigations conducted by the fraud ~~and abuse~~ unit and the materials placed in

310 the files of the unit as a result of any such investigation are exempt from public disclosure under
311 the provisions of chapter 29B of this code;

312 (F) In the event that a final judicial decision adjudges that the statewide prosecutorial
313 powers vested by this subdivision in the fraud ~~and abuse~~ unit may only be exercised by a public
314 official other than an employee of the fraud ~~and abuse~~ unit, then to that extent the provisions of
315 this subdivision vesting statewide prosecutorial power shall thenceforth be of no force and effect,
316 the remaining provisions of this subdivision shall continue in full force and effect, and prosecutions
317 hereunder may only be exercised by the prosecuting attorneys of this state and their assistants
318 or special assistant prosecuting attorneys appointed as provided by law;

319 ~~(23)~~ (13) Enter into interagency agreements to assist in exchanging information and
320 fulfilling the default provisions of this chapter;

321 ~~(24) Notwithstanding any provision of this code to the contrary, the Executive Director,~~
322 ~~under emergency authorization:~~

323 ~~(A) May expend up to \$50,000 for purchases of and may contract for goods and services~~
324 ~~without securing competitive bids. This emergency spending authority expires on July 1, 2005;~~
325 and

326 ~~(B) May expend such sums as the Executive Director determines are necessary for~~
327 ~~professional services, contracts for the purchase of an automated claims administration system~~
328 ~~and associated computer hardware and software in the administration of claims for benefits made~~
329 ~~under provisions of this chapter and contracts for technical services and related services~~
330 ~~necessary to develop, implement and maintain the system and associated computer hardware~~
331 ~~and software. The provisions of article three, chapter five-a of this code relating to the Purchasing~~
332 ~~Division of the Department of Administration shall not apply to these contracts. The Director shall~~
333 ~~award the contract or contracts on a competitive basis. This emergency spending authority~~
334 ~~expires on December 31, 2006~~

335 ~~(25)~~ (14) Establish an employer violator system to identify individuals and employers who
336 are in default, ~~or are delinquent on any premium, assessment, surcharge, tax or penalty owed to~~
337 ~~the Commission~~ as defined by §23-2C-19(d)(1) of this code. The employer violator system shall
338 prohibit violators who own, control or have a 10 percent or more ownership interest, or other
339 ownership interest as may be defined by the ~~Commission~~ Insurance Commissioner, in any
340 company from obtaining or maintaining any license, certificate or permit issued by the state until
341 the violator has paid all moneys owed to the ~~Commission~~ Insurance Commissioner or has entered
342 into and remains in compliance with a repayment agreement;

343 ~~(26)~~ ~~Propose the designation of health care providers to make decisions for the~~
344 ~~Commission regarding appropriateness of medical services;~~

345 ~~(27)~~ ~~Study the correlation between premium tax merit rating for employers and the safety~~
346 ~~performance of employers. This study shall be completed prior to July 1, 2004, and the results~~
347 ~~thereof provided to the board of managers~~

348 ~~(28)~~ (15) ~~Upon termination of the Commission, accomplish the transfer to the Insurance~~
349 ~~Commissioner established in article two c of this chapter, the Insurance Commissioner, and any~~
350 ~~other applicable state agency or department, of the~~ Perform all other functions necessary for the
351 regulation of the workers' compensation insurance industry, including, but not limited to: ~~the~~
352 ~~following commission functions~~ Rate making ratemaking, self-insurance, office of judges, and
353 board of review; ~~The Executive Director may select persons that are assigned to these functions~~
354 ~~on the effective date of the enactment of this section to be assigned and become employees of~~
355 ~~the company as established in article two c of this chapter. The Executive Director may, in~~
356 ~~consultation with the Insurance Commissioner, select persons that are assigned to the Insurance~~
357 ~~Commissioner. The Commission shall determine its fiscal year 2006 budget for each of these~~
358 ~~functions, reduce the budget amount attributable to self-insured employers for these functions~~
359 ~~and shall make advanced quarterly payments to the Insurance Commissioner during fiscal year~~
360 ~~2006 for the actual operational expenses incurred as a direct result of this transfer. The amount~~

361 shall include the funds necessary to operate the industrial council and the Insurance
362 Commissioner shall be administratively responsible for the industrial council's budget: *Provided,*
363 That the payments and expenses shall be reconciled prior to the final fiscal year transfer and any
364 unexpended amount shall be deducted from the final quarter's payment. This reimbursement
365 methodology shall repeat for fiscal year 2007. Any amounts transferred under this section to the
366 Insurance Commissioner shall be appropriated by the Legislature. For the final calendar quarter
367 of 2005 and the first and second calendar quarters of the year 2006, all self-insured employers
368 shall remit to the Insurance Commissioner on a quarterly basis the administrative component of
369 their fiscal year 2006 rate. For the fiscal year beginning July 1, 2006, self-insured employers shall
370 remit an administrative charge to the Insurance Commissioner in an amount determined by the
371 Commissioner. All self-insured employer advance deposits shall transfer from the Commission to
372 the Insurance Commissioner upon termination of the Commission and

373 (29) (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, upon termination of the commission the
2 Insurance Commissioner may:

3 (1) Exempt no more than 20 positions of the offices of the Insurance Commissioner from
4 the classified service of the state, the employees of which positions shall serve at the will and

5 pleasure of the commissioner: *Provided*, That such exempt positions shall be in addition to those
6 positions in classified-exempt service under the classification plan adopted by the Division of
7 Personnel; ~~The Insurance Commissioner shall report all exemptions made under this section to~~
8 ~~the Director of the Division of Personnel no later than July 1, 2007, and thereafter as the~~
9 ~~commissioner determines to be necessary and~~

10 (2) Expend such sums for professional services as he or she determines are necessary
11 to perform these duties transferred to the Insurance Commissioner upon the termination of the
12 ~~commission~~ under this chapter. The provisions of §5A-3-1 *et seq.* of this code relating to the
13 Purchasing Division of the Department of Administration shall not apply to these contracts, and
14 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 ~~(a) In addition to any other oversight of the commission exercised by the Legislature, the~~
2 ~~commission~~ The Insurance Commissioner shall report at least quarterly to the Joint Committee
3 on Government and Finance regarding the funds created in §23-2C-1 *et seq.* of this code. This
4 analysis shall include the current balances in the fund and revenue generated and expended in
5 relationship to the liabilities and assets of the funds and estimates of any debt reduction relative
6 to the fund over the next reporting period. ~~and the joint commission on economic development.~~
7 ~~The commission shall collect data and report on claims and injuries and on the costs and~~
8 ~~outcomes of injuries by standard codes for medical treatment, vocation rehabilitation services,~~
9 ~~return to work services, other benefits payable to or on behalf of employees, efforts to eliminate~~
10 ~~fraud and abuse and the impact of judicial and quasijudicial rulings on the administration of the~~
11 ~~workers' compensation system and the solvency of the fund. The workers' compensation~~
12 ~~commission shall provide to the Joint Committee on Government and Finance and the joint~~

13 ~~commission on economic development an action plan for improving the workers' compensation~~
14 ~~system. This plan shall include detail on any administrative changes undertaken by the~~
15 ~~commission, a report on the anticipated outcome of the changes, a cost-benefit analysis of the~~
16 ~~changes and time frames for commencement and completion of these changes. Subsequent~~
17 ~~reports to the Joint Committee on Government and Finance and the joint commission on~~
18 ~~economic development shall report on the progress of these changes. The administrative~~
19 ~~changes shall include, but are not limited to, claims processing, reorganization, staff development~~
20 ~~and training, return to work programs, workplace alternatives for injured workers, safety programs~~
21 ~~and medical and vocational services.~~

22 ~~(b) The commission shall also report on the current status of the workers' compensation~~
23 ~~fund and the coal workers' pneumoconiosis fund. This analysis shall include the current balances~~
24 ~~in the fund and revenue generated and expended in relationship to the liabilities and assets of the~~
25 ~~funds and estimates of any debt reduction relative to the fund over the next reporting period.~~

26 ~~(c) The commission shall further report on the impact on the workers' compensation~~
27 ~~system of the amendments to subdivision (2), subsection (n), section six, article four of this~~
28 ~~chapter enacted during the year 2003, including, but not limited to, an analysis of any litigation~~
29 ~~resulting from the amendments and the availability of health care to injured workers resulting from~~
30 ~~the amendments.~~

31 ~~(d) The commission shall further report on methodologies used to establish all types of~~
32 ~~assessments and rates.~~

33 ~~(e) The commission shall further report on legislative action that may be required to further~~
34 ~~improve the operation of the commission.~~

35 ~~(f) The commission shall further report on efforts to eliminate fraud and abuse including a~~
36 ~~statistical breakdown of investigations being conducted and their outcomes. The commission shall~~

37 ~~report to the Joint Committee on Government and Finance on a monthly basis until July 1, 2004,~~
38 ~~on fraud and abuse and quarterly thereafter~~

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

1 [Repealed.]

§23-1-4. ~~Office hours; Records; confidentiality; exceptions.~~

1 ~~(a) The offices of the workers' compensation commission shall be open for the transaction~~
2 ~~of business between the hours of 8:30 a.m. and 5:00 p.m. of each and every day, excepting~~
3 ~~Saturdays, Sundays, and legal holidays, and be open upon any additional days and at any~~
4 ~~additional times elected by the commission. The executive director is the chief executive officer~~
5 ~~of the workers' compensation commission.~~

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

22 issuing tribunal or court shall take such actions as proper to maintain the confidentiality of the
23 information.

24 The ~~commission~~ Insurance Commissioner may release, pursuant to a proper request
25 under the provisions of chapter 29B of this code, the following information:

26 ~~(1) The base premium tax rate for a specific employer~~

27 ~~(2) (1) Whether or not a specific employer has obtained coverage under the provisions of~~
28 this chapter;

29 ~~(3) (2) Whether or not a specific employer is in good standing or is delinquent or in default~~
30 according to the ~~commission's~~ Insurance Commissioner's records and the time periods thereof;
31 and

32 ~~(4) (3) If a specific employer is delinquent or in default, what the payments due the~~
33 ~~commission~~ Insurance Commissioner are and what the components of that payment are,
34 including the time periods affected.

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

1 [Repealed.]

§23-1-5. Office of ~~executive director~~ Insurance Commissioner; hearings.

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

1 The ~~executive director, associate director~~ Insurance Commissioner and other employees
2 appointed by the ~~executive director~~ Insurance Commissioner may, for the purpose contemplated
3 by this chapter, administer oaths, certify official acts, take depositions, issue subpoenas, and
4 compel the attendance of witnesses and the production of pertinent books, accounts, papers,
5 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 ~~executive director~~
2 Insurance Commissioner, or subpoena issued by him or her, ~~the associate director~~ or duly
3 appointed employee, or on the refusal of a witness to testify to any matter regarding which he or
4 she may be lawfully interrogated, or refusal to permit an inspection as aforesaid, the circuit judge
5 of the county in which the person resides, on application of the ~~executive director, associate~~
6 ~~director~~ Insurance Commissioner or any duly appointed employee, shall compel obedience by
7 attachment proceedings as for contempt, as in the case of disobedience of the requirements of a
8 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 ~~commission~~ Insurance Commissioner
2 shall receive the same fee as a sheriff and each witness who appears in obedience to a subpoena
3 before the ~~executive director, associate director~~ Insurance Commissioner or duly appointed
4 employee shall receive for his or her attendance the fees and mileage provided for witnesses in
5 civil cases in the circuit court ~~which shall be audited and paid out of the workers' compensation~~
6 ~~fund in the same manner as other expenses are audited and paid~~ if the witness was subpoenaed

7 without the request of either claimant or employer at the instance of the ~~executive director,~~
8 ~~associate director~~ Insurance Commissioner or duly appointed employee. The witness fees and
9 mileage of any witness subpoenaed by, or at the instance of, either claimant or employer shall be
10 paid by the party who subpoenas the witness.

§23-1-11. Depositions; investigations.

1 (a) In an investigation into any matter arising under ~~articles one through five, inclusive, of~~
2 this chapter, the ~~commission~~ Insurance Commissioner may cause depositions of witnesses
3 residing within or without the state to be taken in the manner prescribed by law for like depositions
4 in the circuit court, but the depositions shall be upon reasonable notice to claimant and employer
5 or other affected persons or their respective attorneys. ~~The commission shall designate the~~
6 ~~person to represent it for the taking of the deposition~~

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

16 ~~(c) The powers and duties set forth in the section shall be transferred from the Workers'~~
17 ~~Compensation Commission to the Insurance Commissioner upon termination of the commission~~

§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 ~~executive director~~ Insurance
3 Commissioner and certified and sworn to by the stenographer to be a true and correct transcript

4 of the testimony in the investigation or hearing, or of a particular witness, or of a specific part
5 thereof, or to be a correct transcript of the proceedings had on the investigation or hearing
6 purporting to be taken and subscribed, may be received in evidence by the ~~executive director~~
7 Insurance Commissioner with the same effect as if the stenographer were present and testified
8 to the facts certified. A copy of the transcript shall be furnished on demand to any party upon
9 payment of the fee prescribed in the rules and policies of the ~~commission~~ Insurance
10 Commissioner. The fee shall not exceed that prescribed for 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 ~~Workers' Compensation Commission~~ Insurance Commissioner shall adopt
2 reasonable and proper rules of procedure, regulate and provide for the kind and character of
3 notices, and the service of the notices, in cases of accident and injury to employees, the nature
4 and extent of the proofs and evidence, the method of taking and furnishing of evidence to establish
5 the rights to benefits or compensation from the fund hereinafter provided for, or directly from
6 employers as hereinafter provided, as the case may require, and the method of making
7 investigations, physical examinations and inspections and prescribe the time within which
8 adjudications and awards shall be made.

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

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

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

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

23 (4) Pro se.

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

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

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

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

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

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

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

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

59 (g) In any matter arising under §23-1-1 *et seq.*, §23-2-1 *et seq.*, §23-2A-1 *et seq.*, §23-2C-
60 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
61 the ~~commission~~ Insurance Commissioner is required to give notice to a party, if a party is
62 represented by an attorney or other representative, then notice to the attorney or other
63 representative is sufficient notice to the party represented.

64 ~~(h) The powers and duties set forth in the section shall be transferred from the Workers'~~
65 ~~Compensation Commission to the Insurance Commissioner upon termination of the commission~~

§23-1-14. Forms.

1 The ~~commission~~ Insurance Commissioner shall prepare and furnish free of cost forms
2 (and provide in his or her rules for their distribution so that they may be readily available) of

3 applications for benefits for compensation, ~~from the Workers' Compensation Fund, or directly~~
4 ~~from employers, as the case may be~~ notices to employers, proofs of injury or death, of medical
5 attendance, of employment and wage earnings, and any other forms considered proper and
6 advisable. It is the duty of employers to constantly keep on hand a sufficient supply of the forms.
7 ~~The powers and duties set forth in the section shall be transferred from the Workers'~~
8 ~~Compensation Commission to the Insurance Commissioner as of the termination of the~~
9 ~~commission~~

§23-1-15. Procedure before ~~commission~~ Insurance Commissioner.

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

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

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

§23-1-19. Civil remedies.

1 (a) Any person, firm, corporation, or other entity which willfully, by means of false
2 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, ~~under the programs of the Workers' Compensation~~
6 ~~Commission, the company,~~ from the Insurance Commissioner, a private carrier, or self-insured

7 employer, to which he, she, or it is not entitled, or in a greater amount than that to which he, she,
8 or it is entitled, shall be liable to the ~~Workers' Compensation Commission, the company,~~
9 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, in an
10 amount equal to three times the amount of such benefits, payments, or allowances to which he,
11 she, or it is not entitled and shall be liable for the payment of reasonable attorney fees and all
12 other fees and costs of litigation.

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

15 (c) A civil action under this section may be prosecuted and maintained on behalf of the
16 ~~Workers' Compensation Commission, the~~ Insurance Commissioner, ~~the company~~ a private
17 carrier, or self-insured employer by any attorney in contract with or employed by the ~~Workers'~~
18 ~~Compensation Commission, the~~ Insurance Commissioner, ~~the company~~, a private carrier, or self-
19 insured employer to provide such representation.

20 (d) Venue for a civil action under this section shall be either in the county in which the
21 defendant resides or in Kanawha County as selected by the ~~commission~~ or Insurance
22 Commissioner. ~~Upon creation of the company pursuant to article two c of this chapter, venue~~
23 Venue for a civil action under this section for ~~the company~~ private carriers and self-insured
24 employers shall be either in the county in which the defendant resides or the county in which the
25 injured worker was employed, as selected by the ~~company, the~~ private carrier or self-insured
26 employer.

27 (e) The remedies and penalties provided in this section are in addition to those remedies
28 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 required to subscribe to~~
7 ~~and pay premium taxes into the Workers' Compensation Fund for the protection of their~~
8 ~~employees~~ and are subject to all requirements of this chapter and all rules prescribed by the
9 ~~Workers' Compensation Commission with reference to rate, classification, and premium payment:~~

10 ~~Provided, That rates will be adjusted by the commission to reflect the demand on the~~
11 ~~compensation fund by the covered employer~~ Industrial Council pursuant to §23-2C-5 of this code.

12 (b) The following employers are not required to ~~subscribe to the fund~~ procure workers'
13 compensation insurance, but may elect to do so:

14 (1) Employers of employees in domestic services;

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

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

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

21 (5) Churches;

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

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

33 (8) Taxicab drivers of taxicab companies operating under §24A-2-1 *et seq.* of this code,
34 who provide taxicab service pursuant to a written or electronic agreement that identifies the
35 taxicab driver as an independent contractor consistent with the ~~United States Internal Revenue~~

36 ~~code requirements for persons acting as independent contractors~~ West Virginia Employment Law
37 Worker Classification Act as set forth in §21-5I-1 et seq. of this code: *Provided*, That any such
38 taxicab driver identified as an independent contractor shall not be eligible for workers'
39 compensation benefits under this chapter as an employee of the taxicab company.

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

43 (c) Notwithstanding any other provision of this chapter to the contrary, whenever there are
44 churches in a circuit which employ one individual clergyman and the payments to the clergyman
45 from the churches constitute his or her full salary, such circuit or group of churches may elect to
46 be considered a single employer ~~for the purpose of premium payment into the Workers'~~
47 ~~Compensation Fund.~~

48 ~~(d) Employers who are not required to subscribe to the Workers' Compensation Fund may~~
49 ~~voluntarily choose to subscribe to and pay premiums into the fund for the protection of their~~
50 ~~employees and in that case are subject to all requirements of this chapter and all rules and~~
51 ~~regulations prescribed by the commission with reference to rates, classifications and premium~~
52 ~~payments and shall afford to them the protection of this chapter, including section six of this article,~~
53 ~~but the failure of the employers to choose to subscribe to and to pay premiums into the fund shall~~
54 ~~not impose any liability upon them other than any liability that would exist notwithstanding the~~
55 ~~provisions of this chapter.~~

56 ~~(e) Any foreign corporation employer whose employment in this state is to be for a definite~~
57 ~~or limited period which could not be considered "regularly employing" within the meaning of this~~
58 ~~section may choose to pay into the Workers' Compensation Fund the premiums provided for in~~
59 ~~this section, and at the time of making application to the Workers' Compensation Commission,~~
60 ~~the employer shall furnish a statement under oath showing the probable length of time the~~
61 ~~employment will continue in this state, the character of the work, an estimate of the monthly payroll~~

62 ~~and any other information which may be required by the commission. At the time of making~~
63 ~~application the employer shall deposit with the commission to the credit of the Workers'~~
64 ~~Compensation Fund the amount required by section five of this article. That amount shall be~~
65 ~~returned to the employer if the employer's application is rejected by the commission. Upon notice~~
66 ~~to the employer of the acceptance of his or her application by the commission, he or she is an~~
67 ~~employer within the meaning of this chapter and subject to all of its provisions.~~

68 ~~(f) Any foreign corporation employer choosing to comply with the provisions of this chapter~~
69 ~~and to receive the benefits under this chapter shall, at the time of making application to the~~
70 ~~commission in addition to other requirements of this chapter, furnish the commission with a~~
71 ~~certificate from the Secretary of State, where the certificate is necessary, showing that it has~~
72 ~~complied with all the requirements necessary to enable it legally to do business in this state and~~
73 ~~no application of a foreign corporation employer shall be accepted by the commission until the~~
74 ~~certificate is filed~~

75 ~~(g)~~ (d) The following employers may elect not to provide coverage to certain of their
76 employees under the provisions of this chapter:

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

82 (2) If an employer is a partnership, sole proprietorship, association, or corporation, the
83 employer may elect not to include as an "employee" within this chapter any member of the
84 partnership, the owner of the sole proprietorship, or any corporate officer or member of the board
85 of directors of the association or corporation. The officers of a corporation or an association shall
86 consist of a president, a vice president, a secretary, and a treasurer, each of whom is elected by
87 the board of directors at the time and in the manner prescribed by the bylaws. Other officers and

88 assistant officers that are considered necessary may be elected or appointed by the board of
89 directors or chosen in any other manner prescribed by the bylaws and, if elected, appointed, or
90 chosen, the employer may elect not to include the officer or assistant officer as an “employee”
91 within the meaning of this chapter: *Provided*, That except for those persons who are members of
92 the board of directors or who are the corporation’s or association’s president, vice president,
93 secretary, and treasurer and who may be excluded by reason of their positions from ~~the~~ workers’
94 compensation benefits ~~of~~ required by this chapter even though their duties, responsibilities,
95 activities, or actions may have a dual capacity of work which is ordinarily performed by an officer
96 and also of work which is ordinarily performed by a worker, an administrator, or an employee who
97 is not an officer, no other officer or assistant officer who is elected or appointed shall be excluded
98 by election from coverage or be denied ~~the benefits of this chapter~~ merely because he or she is
99 an officer or assistant officer if, as a matter of fact:

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

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

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

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

111 ~~(h) In the event of election under subsection (g) of this section, the employer shall serve~~
112 ~~upon the commission written notice naming the positions not to be covered and shall not include~~
113 ~~the “employee’s” remuneration for premium purposes in all future payroll reports, and the partner,~~

114 ~~proprietor or corporate or executive officer is not considered an employee within the meaning of~~
115 ~~this chapter after the notice has been served. Notwithstanding the provisions of subsection (g),~~
116 ~~section five of this article, if an employer is delinquent or in default or has not subscribed to the~~
117 ~~Fund even though it is obligated to do so under the provisions of this article, any partner, proprietor~~
118 ~~or corporate or executive officer shall not be covered and shall not receive the benefits of this~~
119 ~~chapter~~

120 ~~(i) (e) “Regularly employing” or “regular employment” means employment by an employer~~
121 ~~which is not a casual employer under this section.~~

122 ~~(j) Upon the termination of the commission, the criteria governing which employer shall or~~
123 ~~may subscribe to the Workers’ Compensation Commission shall also govern which employers~~
124 ~~shall or may purchase Workers’ Compensation insurance under article two-c of this chapter~~

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

1 [Repealed.]

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

1 ~~(a) Whenever with respect to an employee of an employer who is a subscriber in good~~
2 ~~standing to the workers’ compensation fund or an employer who has elected to pay compensation~~
3 ~~directly, as provided in section nine of this article there is a possibility of conflict with respect to~~
4 ~~the application of workers’ compensation laws because the contract of employment is entered~~
5 ~~into and all or some portion of the work is performed or is to be performed in a state or states~~
6 ~~other than this state, the employer and the employee may agree to be bound by the laws of this~~
7 ~~state or by the laws of any other state in which all or some portion of the work of the employee is~~
8 ~~to be performed: *Provided*, That the executive director may review and accept or reject the~~
9 ~~agreement. The review shall be conducted in keeping with the executive director’s fiduciary~~
10 ~~obligations to the workers’ compensation fund which may include, among other things, the nexus~~
11 ~~of the employer and the employee to the state: *Provided, however* That nothing in this section~~
12 ~~shall be construed as to require an agreement in those instances where §23-2-1(b)(3) or §23-2-~~

13 1a(a)(1) of this code are applicable. ~~All agreements shall be in writing and filed with the executive~~
14 ~~director within ten days after execution of the agreement but shall not become effective until~~
15 ~~approved by the executive director and shall, thereafter, remain in effect until terminated or~~
16 ~~modified by agreement of the parties similarly filed or by order of the executive director.~~ If the
17 parties agree to be bound by the laws of this state, an employee injured within the terms and
18 provisions of this chapter is entitled to benefits under this chapter regardless of the situs of the
19 injury or exposure to occupational pneumoconiosis or other occupational disease, and the rights
20 of the employee and his or her dependents under the laws of this state shall be the exclusive
21 remedy against the employer on account of injury, disease, or death in the course of and as a
22 result of the employment.

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

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

35 (d) If any employee or his or her dependents are awarded workers' compensation benefits
36 or recover damages from the employer under the laws of another state for an injury received in
37 the course of and resulting from the employment, the amount awarded or recovered, whether paid

38 or to be paid in future installments, shall be credited against the amount of any benefits payable
39 under this chapter for the same injury.

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

1 ~~(a) For the exclusive purposes of this section, the term “employer” as defined in section~~
2 ~~one of this article includes any primary contractor who regularly subcontracts with other employers~~
3 ~~for the performance of any work arising from or as a result of the primary contractor’s own~~
4 ~~contract: *Provided*, That a subcontractor does not include one providing goods rather than~~
5 ~~services. For purposes of this subsection, extraction of natural resources is a provision of~~
6 ~~services. In the event that a subcontracting employer defaults on its obligations to make payments~~
7 ~~to the commission, then the primary contractor is liable for the payments. However, nothing~~
8 ~~contained in this section shall extend or except to a primary contractor or subcontractors the~~
9 ~~provisions of section six, six a or eight of this article. This section is applicable only with regard to~~
10 ~~subcontractors with whom the primary contractor has a contract for any work or services for a~~
11 ~~period longer than sixty days: *Provided, however*, That this section is also applicable to contracts~~
12 ~~for consecutive periods of work that total more than sixty days. It is not applicable to the primary~~
13 ~~contractor with regard to sub-subcontractors. However, a subcontractor for the purposes of a~~
14 ~~contract with the primary contractor can itself become a primary contractor with regard to other~~
15 ~~employers with whom it subcontracts. It is the intent of the Legislature that no contractor, whether~~
16 ~~a primary contractor, subcontractor, or sub-subcontractor, escape or avoid liability for any~~
17 ~~workers’ compensation premium, assessment or tax. The executive director shall propose for~~
18 ~~promulgation a rule to effect this purpose on or before December 31, 2003.~~

19 ~~(b) A primary contractor may avoid initial liability under subsection (a) of this section if it~~
20 ~~obtains from the executive director, prior to the initial performance of any work by the~~
21 ~~subcontractor’s employees, a certificate that the subcontractor is in good standing with the~~
22 ~~Workers’ Compensation Fund.~~

23 ~~(1) Failure to obtain the certificate of good standing prior to the initial performance of any~~
24 ~~work by the subcontractor results in the primary contractor being equally liable with the~~
25 ~~subcontractor for all delinquent and defaulted premium taxes, premium deposits, interest and~~
26 ~~other penalties arising during the life of the contract or due to work performed in furtherance of~~
27 ~~the contract: *Provided*, That the commission is entitled to collect only once for the amount of~~
28 ~~premiums, premium deposits and interest due to the default, but the commission may impose~~
29 ~~other penalties on the primary contractor or on the subcontractor, or both.~~

30 ~~(2) In order to continue avoiding liability under this section, the primary contractor shall~~
31 ~~request that the commission inform the primary contractor of any subsequent default by the~~
32 ~~subcontractor. In the event that the subcontractor does default, the commission shall notify the~~
33 ~~primary contractor of the default by placing a notice in the certified United States mail, postage~~
34 ~~prepaid, and addressed to the primary contractor at the address furnished to the commission by~~
35 ~~the primary contractor. The mailing is good and sufficient notice to the primary contractor of the~~
36 ~~subcontractor's default. However, the primary contractor is not liable under this section until the~~
37 ~~first day of the calendar quarter following the calendar quarter in which the notice is given and~~
38 ~~then the liability is only for that following calendar quarter and thereafter and only if the subcontract~~
39 ~~has not been terminated: *Provided*, That the commission is entitled to collect only once for the~~
40 ~~amount of premiums, premium deposits and interest due to the default, but the commission may~~
41 ~~impose other penalties on the primary contractor or on the subcontractor, or both.~~

42 ~~(c) In any situation where a subcontractor defaults with regard to its payment obligations~~
43 ~~under this chapter or fails to provide a certificate of good standing as provided in this section, the~~
44 ~~default or failure is good and sufficient cause for a primary contractor to hold the subcontractor~~
45 ~~responsible and to seek reimbursement or indemnification for any amounts paid on behalf of the~~
46 ~~subcontractor to avoid or cure a workers' compensation default, plus related costs, including~~
47 ~~reasonable attorneys' fees, and to terminate its subcontract with the subcontractor~~
48 ~~notwithstanding any provision to the contrary in the contract.~~

49 ~~(d) The provisions of this section are applicable only to those contracts entered into or~~
50 ~~extended on or after January 1, 1994.~~

51 ~~(e) The commission may take any action authorized by section five a of this article in~~
52 ~~furtherance of its efforts to collect amounts due from the primary contractor under this section.~~

53 ~~(f) Effective upon termination of the commission, subsections (a) through (e), inclusive, of~~
54 ~~this section shall be applicable only to unpaid premiums due the commission or the Old Fund as~~
55 ~~provided in article two c of this chapter~~

56 ~~(g)~~ (a) The Legislature finds that every prime contractor should be responsible to ensure
57 that any subcontractor with which it directly contracts is either self-insured or maintains workers'
58 compensation coverage throughout the periods during which the services of a subcontractor are
59 used and, further, if the subcontractor is neither self-insured nor covered, then the prime
60 contractor rather than the Uninsured Employer Fund should be responsible for the payment of
61 statutory benefits. It is also the intent of the Legislature that this section not be used as the basis
62 for expanding the liability of a prime contractor beyond the limited purpose of providing coverage
63 in the limited circumstances and in the manner expressly addressed by this section: *Provided,*
64 That receipt by the prime contractor of a certificate of coverage from a subcontractor shall be
65 deemed to relieve the prime contractor of responsibility regarding the subcontractor's workers'
66 compensation coverage.

67 ~~(h)~~ (b) ~~On after the effective date of the reenactment of this section in 2009, if~~ If an
68 employee of a subcontractor suffers an injury or disease and, on the date of injury or last
69 exposure, his or her employer did not have workers' compensation coverage or was not an
70 approved self-insured employer, and the prime contractor did not obtain certification of coverage
71 from the subcontractor, then that employee may file a claim against the prime contractor for which
72 the subcontractor performed services on the date of injury or last exposure, and such claim shall
73 be administered in the same manner as claims filed by injured employees of the prime contractor:
74 *Provided,* That a subcontractor that subcontracts with another subcontractor shall, with respect

75 to such subcontract, ~~is~~ be the prime contractor for the purposes of this section: *Provided, however,*
76 That the provisions of this subsection do not relieve a subcontractor from any requirements of this
77 chapter, including the duty to maintain coverage on its employees. The subcontractor shall
78 provide proof of continuing coverage to the prime contractor by providing a certificate showing
79 current as well as renewal or replacement coverage during the term of the contract between the
80 prime contractor and the subcontractor. The subcontractor shall provide notice to the prime
81 contractor within two business days of cancellation or expiration of coverage.

82 (+) (c) Notwithstanding that an injured employee of a subcontractor is eligible for workers'
83 compensation benefits pursuant to this section from the prime contractor's carrier or the self-
84 insured prime contractor, whichever is applicable, a subcontractor who has failed to maintain
85 workers' compensation coverage on its employees:

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

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

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

92 (+) (d) If a claim of an injured employee of a subcontractor is accepted or conditionally
93 accepted into the Uninsured Employer Fund, both the prime contractor and subcontractor are
94 jointly and severally liable for any payments made by the fund, and the Insurance Commissioner
95 may seek recovery of the payments, plus administrative costs and attorneys' fees, from the prime
96 contractor, the subcontractor, or both: *Provided,* That a prime contractor who is held liable
97 pursuant to this subsection for the payment of benefits to an injured employee of a subcontractor
98 may recover the amount of such payments from the subcontractor, plus reasonable attorneys' fee
99 and costs: *Provided, however,* That if a prime contractor has performed due diligence in all
100 matters requiring ~~an verifying~~ the verification of a subcontractor's maintenance of workers'

101 compensation insurance coverage, ~~then~~ then the prime contractor is not liable for any claim made
102 hereunder against the subcontractor.

**§23-2-2. ~~Commission~~ Insurance Commissioner to be furnished information by employers,
State Tax Commissioner, and ~~division of unemployment compensation~~ WorkForce
West Virginia; secrecy of information; examination of employers, etc.; violation a
misdemeanor.**

1 (a) Every employer shall furnish the ~~executive director~~ Insurance Commissioner, upon
2 request, all information required by him or her to carry out the purposes of this chapter. Every
3 employer shall have a continuous and ongoing duty to maintain current information about its
4 activities, risks, and rates ~~on the books of the commission~~ regarding workers' compensation
5 coverage. The ~~Executive Director~~ Insurance Commissioner ~~or any person employed by the~~
6 ~~commission for that purpose~~ may examine under oath any employer or officer, agent, or employee
7 of any employer.

8 (b) Notwithstanding the provisions of any other statute to the contrary, specifically, but not
9 exclusively, §11-10-5, §11-10-5b, and §21A-10-11 of this code, the ~~Executive Director of the~~
10 ~~Workers' Compensation Commission~~ Insurance Commissioner may receive the following
11 information:

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

19 (2) Upon written application to the ~~Division of Unemployment Compensation~~ WorkForce
20 West Virginia: In addition to the information that may be released to the ~~Workers' Compensation~~

21 ~~Commission~~ Insurance Commissioner for the purposes of this chapter under the provisions of
22 chapter 21A of this code, the names, addresses, and other identifying information of all employing
23 units filing reports and information pursuant to §21A-10-11 of this code as well as information
24 contained in those reports regarding the number and names, addresses, and social security
25 numbers of employees employed and the gross quarterly or other applicable reporting period
26 wages paid by each employing unit to each identified employee.

27 (c) All information acquired by the ~~Workers' Compensation Commission~~ Insurance
28 Commissioner pursuant to §23-2-2(b) of this code shall be used only for ~~auditing premium~~
29 ~~payments, assisting in a wage determination, assisting in the determination of employment status,~~
30 ~~and registering businesses under the single point of registration program as set forth in article~~
31 ~~twelve, chapter eleven of this code~~ the performance of the functions necessary for the regulation
32 of the workers' compensation insurance industry and other duties as set forth in this chapter. ~~The~~
33 ~~Workers' Compensation Commission Insurance Commissioner, upon receiving the business~~
34 ~~franchise registration certificate information made available pursuant to subsection (b) of this~~
35 ~~section, shall contact all businesses receiving a business franchise registration certificate and~~
36 ~~provide all necessary forms to register the business under the provisions of this article. Any officer~~
37 ~~or employee of this state who uses the information obtained under this section in any manner~~
38 ~~other than the one stated in this section or elsewhere authorized in this code, or who divulges or~~
39 ~~makes known in any manner any of the information obtained under this section, is guilty of a~~
40 ~~misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or~~
41 ~~incarcerated in the county or regional jail for not more than one year, or both together with cost of~~
42 ~~prosecution~~

43 (d) Reasonable costs of compilation and production of any information made available
44 pursuant to §23-2-2(b) of this code shall be charged to the ~~Workers' Compensation Commission~~
45 Insurance Commissioner.

46 (e) Information acquired by the ~~commission~~ Insurance Commissioner pursuant to §23-2-
47 2(b) of this code is not subject to disclosure under the provisions of chapter 29B of this code.

48 (f) ~~The right to request, gather and maintain information set forth in this section shall~~
49 ~~transfer to the Insurance Commissioner and the industrial council upon termination of the~~
50 ~~commission~~

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

1 The ~~commission, and effective upon termination of the commission,~~ the Insurance
2 Commissioner shall prepare and furnish report forms for the use of employers subject to this
3 chapter. Every employer receiving from the ~~commission~~ Insurance Commissioner any form or
4 forms with direction for completion and returning to the ~~commission~~ Insurance Commissioner shall
5 return the form, within the period fixed by the ~~commission~~ Insurance Commissioner, completed
6 as to answer fully and correctly all pertinent questions in the form, and if unable to do so, shall
7 give good and sufficient reasons for the failure. ~~Every employer subject to the provisions of this~~
8 ~~chapter shall make application to the commission on the forms prescribed by the commission for~~
9 ~~that purpose; and any employer who terminates his or her business or for any other reason is no~~
10 ~~longer subject to this chapter shall immediately notify the commission on forms to be furnished~~
11 ~~by the commission for that purpose~~

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

1 [Repealed.]

**§23-2-5. ~~Application; payment of premium taxes; gross wages; payroll report; deposits;
delinquency; default; reinstatement; payment of benefits; notice~~ Notice to
employees. ~~criminal provisions; penalties.~~**

1 (a) ~~For the purpose of creating a Workers' Compensation Fund, each employer who is~~
2 ~~required to subscribe to the fund or who elects to subscribe to the fund shall pay premium taxes~~
3 ~~calculated as a percentage of the employer's gross wages payroll as defined by the commission~~

4 ~~at the rate determined by the commission and then in effect plus any additional premium taxes~~
5 ~~developed from rates, surcharges or assessments as determined by the commission. At the time~~
6 ~~each employer subscribes to the fund, the application required by the commission shall be filed~~
7 ~~and a premium deposit equal to the first quarter's estimated premium tax payment shall be~~
8 ~~remitted. The minimum quarterly or other reporting period premium to be paid by any employer is~~
9 ~~\$25.~~

10 ~~(1) Thereafter, the premium taxes shall be paid quarterly or at other payment intervals~~
11 ~~established by the commission on or before the last day of the month following the end of the~~
12 ~~quarter or designated payment interval and shall be the prescribed percentage of the entire gross~~
13 ~~wages of all employees, from which net payroll is calculated and paid, during the preceding~~
14 ~~quarter or other designated payment interval. The commission may require employers, in~~
15 ~~accordance with the provisions of rules proposed by the executive director and promulgated by~~
16 ~~the board of managers, to report gross wages and pay premium taxes monthly or at other~~
17 ~~intervals.~~

18 ~~(2) Every subscribing employer shall make a gross wages payroll report to the commission~~
19 ~~for the preceding reporting period. The report shall be on the form or forms prescribed by the~~
20 ~~commission and shall contain all information required by the commission.~~

21 ~~(3) After subscribing to the fund, each employer shall remit with each premium tax~~
22 ~~payment an amount calculated to be sufficient to maintain a premium deposit equal to the~~
23 ~~premium payment for the previous reporting period. The commission may reduce the amount of~~
24 ~~the premium deposit required from seasonal employers for those reporting periods during which~~
25 ~~employment is significantly reduced. If the employer pays premium tax on a basis other than~~
26 ~~quarterly, the commission may require the deposit to be based upon some other time period. The~~
27 ~~premium deposit shall be credited to the employer's account on the books of the commission and~~
28 ~~used to pay premium taxes and any other sums due the fund when an employer becomes~~
29 ~~delinquent or in default as provided in this article.~~

30 ~~(4) All premium taxes and premium deposits required by this article to be paid shall be~~
31 ~~paid by the employers to the commission, which shall maintain a record of all sums so received.~~
32 ~~Any sum mailed to the commission is considered to be received on the date the envelope~~
33 ~~transmitting it is postmarked by the United States Postal Service. All sums received by the~~
34 ~~commission shall be deposited in the State Treasury to the credit of the Workers' Compensation~~
35 ~~Commission in the manner now prescribed by law.~~

36 ~~(5) The commission shall encourage employer efforts to create and maintain safe~~
37 ~~workplaces, to encourage loss prevention programs and to encourage employer provided~~
38 ~~wellness programs, through the normal operation of the experience rating formula, seminars and~~
39 ~~other public presentations, the development of model safety programs and other initiatives as~~
40 ~~may be determined by the executive director and the board of managers.~~

41 ~~(b) Failure of an employer to timely pay premium taxes as provided in subsection (a) of~~
42 ~~this section, to timely file a payroll report or to maintain an adequate premium deposit shall cause~~
43 ~~the employer's account to become delinquent. No employer will be declared delinquent or be~~
44 ~~assessed any penalty for the delinquency if the commission determines that the delinquency has~~
45 ~~been caused by delays in the administration of the fund. The commission shall, in writing, within~~
46 ~~sixty days of the end of each reporting period notify all delinquent employers of their failure to~~
47 ~~timely pay premium taxes, to timely file a payroll report or to maintain an adequate premium~~
48 ~~deposit. Each employer who fails to timely file any payroll report or timely pay the premium tax~~
49 ~~due with the report, or both, for any reporting period commencing on and after July 1, 1995, shall~~
50 ~~pay a late reporting or payment penalty of the greater of \$50 or a sum obtained by multiplying the~~
51 ~~premium tax due with the report by the penalty rate applicable to that reporting period. The penalty~~
52 ~~rate to be used in a Workers' Compensation Commission's fiscal year is calculated annually on~~
53 ~~the first day of each fiscal year. The penalty rate used to calculate the penalty for each reporting~~
54 ~~period in a fiscal year is the quotient, rounded to the nearest higher whole number percentage~~
55 ~~rate, obtained by dividing the sum of the prime rate plus four percent by four. The prime rate is~~

56 ~~the rate published in the *Wall Street Journal* on the last business day of the commission's prior~~
57 ~~fiscal year reflecting the base rate on corporate loans posted by at least seventy five percent of~~
58 ~~the nation's thirty largest banks. The late penalty shall be paid with the most recent reporting~~
59 ~~period's report and payment and is due when that reporting period's report and payment are filed.~~
60 ~~If the late penalty is not paid when due, it may be charged to and collected by the commission~~
61 ~~from the employer's premium deposit account or otherwise as provided by law. The notification~~
62 ~~shall demand the filing of the delinquent payroll report and payment of delinquent premium taxes,~~
63 ~~the penalty for late reporting or payment of premium taxes or premium deposit, the interest penalty~~
64 ~~and an amount sufficient to maintain the premium deposit before the end of the third month~~
65 ~~following the end of the preceding reporting period. Interest shall accrue and be charged on the~~
66 ~~delinquent premium payment and premium deposit pursuant to section thirteen of this article.~~

67 ~~(c) Whenever the commission notifies an employer of the delinquent status of its account,~~
68 ~~the notification shall explain the legal consequence of subsequent default by an employer required~~
69 ~~to subscribe to the fund and the legal consequences of termination of an electing employer's~~
70 ~~account.~~

71 ~~(d) Failure by the employer, who is required to subscribe to the fund and who fails to~~
72 ~~resolve the delinquency within the prescribed period, shall place the account in default and shall~~
73 ~~deprive the default employer of the benefits and protection afforded by this chapter, including~~
74 ~~section six of this article, and the employer is liable as provided in section eight of this article. The~~
75 ~~default employer's liability under these sections is retroactive to midnight of the last day of the~~
76 ~~month following the end of the reporting period for which the delinquency occurs. The commission~~
77 ~~shall notify the default employer of the method by which the employer may be reinstated with the~~
78 ~~fund. The commission shall also notify the employees of the employer by written notice as~~
79 ~~hereinafter provided in this section.~~

80 ~~(e) Failure by any employer, who voluntarily elects to subscribe, to resolve the delinquency~~
81 ~~within the prescribed period shall place the account in default and shall automatically terminate~~

82 ~~the election of the employer to pay into the Workers' Compensation Fund and shall deprive the~~
83 ~~employer and the employees of the default elective employer of the benefits and protection~~
84 ~~afforded by this chapter, including section six of this article, and the employer is liable as provided~~
85 ~~in section eight of this article. The default employer's liability under that section is retroactive to~~
86 ~~midnight of the last day of the month following the end of the payment period for which the~~
87 ~~delinquency occurs. Employees who were the subject of the default employer's voluntary election~~
88 ~~to provide them the benefits afforded by this chapter shall have the protection terminated at the~~
89 ~~time of their employer's default.~~

90 ~~(f) (1) Except as provided in subdivision (3) of this subsection, any employer who is~~
91 ~~required to subscribe to the fund and who is in default on the effective date of this section or who~~
92 ~~subsequently defaults, and any employer who has elected to subscribe to the fund and who~~
93 ~~defaults and whose account is terminated prior to the effective date of this section or whose~~
94 ~~account is subsequently terminated, shall be restored immediately to the benefits and protection~~
95 ~~of this chapter only upon the filing of all delinquent payroll and other reports required by the~~
96 ~~commission and payment into the fund of all unpaid premiums, an adequate premium deposit,~~
97 ~~accrued interest and the penalty for late reporting and payment. Interest is calculated as provided~~
98 ~~by section thirteen of this article.~~

99 ~~The commission shall not have the authority to waive either premium or accrued interest:~~
100 ~~*Provided, That until termination of the commission, the commissioner shall have the authority to*~~
101 ~~waive either premium or accrued interest if the waiver is part of the full and final resolution of~~
102 ~~administrative or civil litigation. The provisions of section seventeen of this article apply to any~~
103 ~~action or decision of the commission under this section.~~

104 ~~(2) The commission may restore a defaulted or terminated employer through a~~
105 ~~reinstatement agreement. The reinstatement agreement shall require the payment in full of all~~
106 ~~premium taxes, premium deposits, the penalty for late reporting and payment, past accrued~~
107 ~~interest and future interest calculated pursuant to the provisions of section thirteen of this article.~~

108 ~~Notwithstanding the filing of a reinstatement application or the entering into of a reinstatement~~
109 ~~agreement, the commission is authorized to file a lien against the employer as provided by section~~
110 ~~five-a of this article. In addition, entry into a reinstatement agreement is discretionary with the~~
111 ~~commission. Its discretion shall be exercised in keeping with the fiduciary obligations owed to the~~
112 ~~Workers' Compensation Fund. If the commission declines to enter into a reinstatement agreement~~
113 ~~and if the employer does not comply with the provisions of subdivision (1) of this subsection, the~~
114 ~~commission may proceed with any of the collection efforts provided by section five-a of this article~~
115 ~~or as otherwise provided by this code. Applications for reinstatement shall: (A) Be made upon~~
116 ~~forms prescribed by the commission; (B) include a report of the gross wages payroll of the~~
117 ~~employer which had not been reported to the commission during the entire period of delinquency~~
118 ~~and default. The gross wages information shall be certified by the employer or its authorized~~
119 ~~agent; and (C) include a payment of a portion of the liability equal to one half of one percent of~~
120 ~~the gross payroll during the period of delinquency and default or equal to another portion of the~~
121 ~~liability determined by rule but not to exceed the amount of the entire liability due and owing for~~
122 ~~the period of delinquency and default. An employer who applies for reinstatement is entitled to~~
123 ~~the benefits and protection of this chapter on the day a properly completed and acceptable~~
124 ~~application which is accompanied by the application payment is received by the commission:~~
125 ~~*Provided, That if the commission reinstates an employer subject to the terms of a reinstatement*~~
126 ~~agreement, the subsequent failure of the employer to make scheduled payments or to pay~~
127 ~~accrued or future interest in accordance with the reinstatement agreement or to timely file current~~
128 ~~reports and to pay current premiums within the month following the end of the period for which~~
129 ~~the report and payment are due, or to otherwise maintain its account in good standing or, if the~~
130 ~~reinstatement agreement does not require earlier restoration of the premium deposit, to restore~~
131 ~~the premium deposit to the required amount by the end of the repayment period shall cause the~~
132 ~~reinstatement application and the reinstatement agreement to be null, void and of no effect, and~~

133 ~~the employer is denied the benefits and protection of this chapter effective from the date that the~~
134 ~~employer's account originally became delinquent.~~

135 ~~(3) Any employer who fails to maintain its account in good standing with regard to~~
136 ~~subsequent premium taxes and premium deposits after filing an application for reinstatement and~~
137 ~~prior to the final resolution of an application for reinstatement by entering into a reinstatement~~
138 ~~agreement or by payment of the liability in full as provided in subdivision (1) of this subsection~~
139 ~~shall cause the reinstatement application to be null, void and of no effect and the employer shall~~
140 ~~be denied the benefits and protection of this chapter effective from the date that the employer's~~
141 ~~account originally became delinquent.~~

142 ~~(4) Following any failure of an employer to comply with the provisions of a reinstatement~~
143 ~~agreement, the commission may make and continue with any of the collection efforts provided by~~
144 ~~this chapter or elsewhere in this code even if the employer files another reinstatement application.~~

145 ~~(g) With the exception noted in subsection (h), section one of this article, no employee of~~
146 ~~an employer required by this chapter to subscribe to the Workers' Compensation Fund shall be~~
147 ~~denied benefits provided by this chapter because the employer failed to subscribe or because the~~
148 ~~employer's account is either delinquent or in default.~~

149 ~~(h) (1) The provisions of this section shall not deprive any individual of any cause of action~~
150 ~~which has accrued as a result of an injury or death which occurred during any period of~~
151 ~~delinquency not resolved in accordance with the provisions of this article, or subsequent failure~~
152 ~~to comply with the terms of the repayment agreement.~~

153 ~~(2) Upon withdrawal from the fund or termination of election of any employer, the employer~~
154 ~~shall be refunded the balance due the employer of its deposit, after deducting all amounts owed~~
155 ~~by the employer to the Workers' Compensation Fund and other agencies of this state, and the~~
156 ~~commission shall notify the employees of the employer of the termination in the manner as the~~
157 ~~commission may consider best and sufficient.~~

158 ~~(3)~~ Upon discovery that an employer is not maintaining West Virginia workers'
159 compensation insurance, the Insurance Commissioner shall issue a written notice to the
160 employees of that employer. Notice to employees provided in this section shall be given by posting
161 written notice that the employer is defaulted under the compensation law of West Virginia and in
162 ~~the case of employers required by this chapter to subscribe and pay premiums to the fund that~~
163 the defaulted employer is liable to its employees for injury or death, both in Workers'
164 Compensation benefits and in damages at common law or by statute. ~~and in the case of~~
165 ~~employers not required by this chapter to subscribe and pay premiums to the fund, but voluntarily~~
166 ~~electing to do so as provided in this article, that neither the employer nor the employees are~~
167 ~~protected by the law as to any injury or death sustained after the date specified in the notice.~~ The
168 notice shall be in the form prescribed by the ~~commission~~ Insurance Commissioner and shall be
169 posted in a conspicuous place at the chief works of the employer, as it appears in records of the
170 ~~commission~~ Insurance Commissioner. If the chief works of the employer cannot be found or
171 identified, the notices shall be posted at the front door of the courthouse of the county in which
172 the chief works are located, according to the ~~commission's~~ Insurance Commissioner's records.
173 Any person who shall, prior to the reinstatement of the employer, as provided in this section, or
174 prior to sixty days after the posting of the notice, whichever shall first occur, remove, deface, or
175 render illegible the notice, shall be guilty of a misdemeanor and, upon conviction thereof, shall be
176 fined \$1,000. The notice shall state this provision upon its face. The ~~commission~~ Insurance
177 Commissioner may require any sheriff, deputy sheriff, constable, or other official of the State of
178 West Virginia, authorized to serve civil process, to post the notice and to make return thereof of
179 the fact of the posting to the ~~commission~~ Insurance Commissioner. Any failure of the officer to
180 post any notice within 10 days after he or she has received the notice from the ~~commission~~
181 Insurance Commissioner, without just cause or excuse, constitutes a willful failure or refusal to
182 perform a duty required of him or her by law within the meaning of §61-5-28 of this code. Any
183 person actually injured by reason of the failure has an action against the official, and upon any

184 official bond he or she may have given, for the damages as the person may actually have incurred,
185 but not to exceed, in the case of any surety upon the bond, the amount of the penalty of the bond.
186 Any official posting the notice as required in this ~~subdivision~~ section is entitled to the same fee as
187 is now or may hereafter be provided for the service of process in suits instituted in courts of record
188 in the State of West Virginia. The fee shall be paid by the ~~commission~~ Insurance Commissioner
189 out of any funds at its his or her disposal. ~~but shall be charged by the commission against the~~
190 ~~account of the employer to whose delinquency the notice relates~~

§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 ~~Workers' Compensation Commission~~ Insurance Commissioner in the name of the
2 state may commence a civil action against an employer who, after due notice, defaults in any
3 payment required by this chapter. If judgment is against the employer, the employer shall pay the
4 costs of the action. A civil action under this section shall be given preference on the calendar of
5 the court over all other civil actions. Upon prevailing in a civil action, the ~~commission~~ Insurance
6 Commissioner is entitled to recover its attorneys' 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 ~~commission~~ Insurance Commissioner and shall, in addition, be a lien
10 enforceable against all the property of the employer: *Provided*, That the lien shall not be
11 enforceable as against a purchaser (including a lien creditor) of real estate or personal property
12 for a valuable consideration without notice, unless docketed as provided in §38-10C-1 of this
13 code: *Provided, however*, That the lien may be enforced as other judgment liens are enforced

14 through the provisions of said chapter and the same is considered deemed by the circuit court to
15 be a judgment lien for this purpose.

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

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

36 (e) The Secretary of State of this state shall withhold the issuance of any certificate of
37 dissolution or withdrawal in the case of any corporation organized under the laws of this state or
38 organized under the laws of any other state and admitted to do business in this state, until notified
39 by the ~~commission~~ Insurance Commissioner that all payments, interest, and penalties thereon

40 against the corporation which is an employer under this chapter have been paid or that provision
41 satisfactory to the ~~commission~~ Insurance Commissioner has been made for payment.

42 (f) In any case when an employer ~~required to subscribe to the fund defaults in payments~~
43 ~~of premium, premium deposits, penalty or interest thereon, for as many as two reporting periods,~~
44 ~~which reporting periods need not be consecutive, and remains in default after due notice, is in~~
45 ~~default to the Old Fund or has a liability to the Uninsured Employer Fund or is in default on a~~
46 ~~policy or otherwise fails to maintain mandatory workers' compensation coverage,~~ the ~~commission~~
47 Insurance Commissioner may bring action in the circuit court of Kanawha County to enjoin the
48 employer from continuing to ~~carry on~~ operate the employer's business ~~in which the liability was~~
49 ~~incurred as provided for in §33-2-22 of this code: Provided, That the commission~~ Insurance
50 Commissioner may, in his or her sole discretion and as an alternative to this action, require the
51 delinquent employer to file a bond in the form prescribed by the ~~commission~~ Insurance
52 Commissioner with satisfactory surety in an amount not less than ~~forty~~ 150 percent ~~more than of~~
53 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 ~~subscribes and pays into the workers'~~
2 ~~compensation fund the premiums provided by this chapter~~ procures and continuously maintains
3 workers' compensation insurance as required by this chapter or who elects to make direct
4 payments of compensation as provided in this section is not liable to respond in damages at
5 common law or by statute for the injury or death of any employee, however occurring, after so
6 subscribing or electing, and during any period in which the employer is not in default ~~in the~~

7 ~~payment of the premiums or direct payments~~ and has complied fully with all other provisions of
8 this chapter. Continuation in the service of the employer shall be considered a waiver by the
9 employee and by the parents of any minor employee of the right of action as aforesaid, which the
10 employee or his or her parents would otherwise have: *Provided*, That in case of employers not
11 required by this chapter to ~~subscribe and pay premiums into the workers' compensation fund~~
12 procure and maintain workers' compensation insurance, the injured employee has remained in
13 the employer's service with notice that his or her employer has elected to ~~pay into the workers'~~
14 ~~compensation fund the premiums provided by this chapter~~ procure and maintain workers'
15 compensation insurance, or has 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 ~~electing not to pay or defaulting in payment of premiums for~~
failing to procure or maintain workers' compensation insurance; certain common-
law defenses prohibited; exceptions.**

1 All employers ~~required by this chapter to subscribe to and pay premiums into the workers'~~
2 ~~compensation fund, except the State of West Virginia, the governmental agencies or departments~~
3 ~~created by it, and municipalities and political subdivisions of the state, and who do not subscribe~~
4 ~~to and pay premiums into the workers' compensation fund as required by this chapter and have~~
5 ~~not elected to pay individually and directly or from benefit funds compensation and expenses to~~
6 ~~injured employees or fatally injured employees' dependents under the provisions of section nine~~
7 ~~of this article, or having so subscribed or elected, shall be in default in the payment of same, or~~
8 ~~not having otherwise fully complied with the provisions of section five or section nine of this article~~
9 who fail to procure and continuously maintain workers' compensation insurance as required by
10 this chapter or who fail to obtain permission to self-insure their workers' compensation risk as

11 permitted by §23-2-9 of this code shall be liable to their employees (within the meaning of this
12 article) for all damages suffered by reason of personal injuries sustained in the course of
13 employment caused by the wrongful act, neglect, or default of the employer or any of the
14 employer's officers, agents, or employees while acting within the scope of their employment and
15 in the course of their employment and also to the personal representatives of such employees
16 where death results from such personal injuries, and in any action by any such employee or
17 personal representative thereof, such defendant shall not avail himself or herself of the following
18 common-law defenses: The defense of the fellow-servant rule; the defense of the assumption of
19 risk; or the defense of contributory negligence; and further shall not avail himself or herself of any
20 defense that the negligence in question was that of someone whose duties are prescribed by
21 statute: *Provided*, That such provision depriving a defendant employer of certain common-law
22 defenses under the circumstances therein set forth shall not apply to an action brought against a
23 county court, Board of Education, municipality, or other political subdivision of the state, or against
24 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 ~~board of managers~~ or 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 ~~commission or~~ Insurance Commissioner for use by the employer or its guarantors, surety
48 companies, banks, 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 ~~board of managers or~~ industrial council, regulate the
52 administration of claims by employers granted permission to self-insure their obligations under
53 this chapter. A self-insured employer shall comply with rules promulgated by the ~~board of~~
54 ~~managers or~~ industrial council governing the self-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 ~~board of managers or~~ industrial council may constitute sufficient
66 grounds for the termination of the authority for any employer to self-insure its obligations under
67 this chapter.

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

72 (d)(1) If a self-insured employer defaults in the payment of any portion of surcharges or
73 assessments required under this chapter or rules promulgated thereunder, or in any payment
74 required to be made as benefits provided by this chapter to the employer's injured employees or
75 ~~dependants~~ dependents of fatally injured employees, the Insurance Commissioner shall, in an
76 appropriate case, determine the full accrued value based upon generally accepted actuarial and
77 accounting principles of the employer's liability, including the costs of all awarded claims and of
78 all incurred but not reported claims. The amount determined may, in an appropriate case, be
79 assessed against the employer. The Insurance Commissioner may demand and collect the
80 present value of the defaulted liability. Interest shall accrue upon the demanded amount as
81 provided in §23-2-13 of this code until the liability is fully paid. Payment of all amounts then due
82 to the Insurance Commissioner and to the employer's employees is a sufficient basis for
83 reinstating the employer to good standing with the Insurance Commissioner and removing the
84 employer from default status.

85 (2) The assessments and surcharges required to be paid by self-insured employers
86 pursuant to the provisions of this chapter and the rules promulgated thereunder are special
87 revenue taxes under and according to the provisions of state workers' compensation law and are

88 considered to be tax claims, as priority claims or administrative expense claims according to those
89 provisions under the law provided in the United States bankruptcy code, Title 11 of the United
90 States Code. In addition, as the same was previously intended by the prior provisions of this
91 section, this amendment and reenactment is for the purpose of clarification of the taxing authority
92 of the Insurance Commissioner.

93 ~~(e) The commission may create, implement, establish and administer a perpetual self-~~
94 ~~insurance security risk pool of funds, sureties, securities, insurance provided by private insurance~~
95 ~~carriers or other states' programs, and other property, of both real and personal properties, to~~
96 ~~secure the payment of obligations of self-insured employers. If a pool is created, the board of~~
97 ~~managers shall adopt rules for the organizational plan, participation, contributions and other~~
98 ~~payments which may be required of self-insured employers under this section. The board of~~
99 ~~managers may adopt a rule authorizing the commission to assess each self-insured employer in~~
100 ~~proportion according to each employer's portion of the unsecured obligation and liability or to~~
101 ~~assess according to some other method provided by rule which shall properly create and fund the~~
102 ~~risk pool to serve the needs of employees, employers and the Workers' Compensation Fund by~~
103 ~~providing adequate security. The board of managers establishing a security risk pool may~~
104 ~~authorize the executive director to use any assessments, premium taxes and revenues and~~
105 ~~appropriations as may be made available to the commission. Effective upon termination of the~~
106 ~~commission, all statutory and regulatory authority provided to the commission and board of~~
107 ~~managers over pools created pursuant to this section, as such pools are defined in section two,~~
108 ~~article two c of this chapter, shall transfer to the Insurance Commissioner.~~

109 (f) (e) Any self-insured employer which has had a period of inactivity due to the
110 nonemployment of employees which results in its reporting of no wages on reports to the
111 Insurance Commissioner for a period of four or more consecutive quarters may have its status
112 inactivated and shall apply for reactivation to status as a self-insured employer prior to its
113 reemployment of employees. Despite the inactivation, the self-insured employer shall continue to

114 make payments on all awards for which it is responsible. Upon application for reactivation of its
115 status as an operating self-insured employer, the employer shall document that it meets the
116 eligibility requirements needed to maintain self-insured employer status under this section and
117 any rules adopted to implement it. If the employer is unable to requalify and obtain approval for
118 reactivation, the employer shall, effective with the date of employment of any employee, purchase
119 workers' compensation insurance as provided in §23-2C-1 *et seq.* of this code, but shall continue
120 to be a self-insurer as to the prior period of active status and to furnish security or bond and meet
121 its prior self-insurance obligations.

122 ~~(g) (f) In any case under the provisions of this section that requires the payment of~~
123 ~~compensation or benefits by an employer in periodical payments and the nature of the case~~
124 ~~makes it possible to compute the present value of all future payments, the commission may, in its~~
125 ~~discretion, at any time compute and permit to be paid into the Workers' Compensation Fund an~~
126 ~~amount equal to the present value of all unpaid future payments on the award or awards for which~~
127 ~~liability exists in trust. Thereafter, the employer shall be discharged from any further portion of~~
128 ~~premium tax liability upon the award or awards and payment of the award or awards shall be~~
129 ~~assumed by the commission. Upon termination of the commission, the process herein described~~
130 ~~will no longer be permitted.~~ Self-insured employers may thereafter withdraw from self-insured
131 status and purchase workers' compensation insurance as provided in §23-2C-1 *et seq.* of this
132 code, but said self-insured employers shall remain liable for their self-insured employer claims
133 liabilities for each claim with a date of injury or last exposure prior to the effective date of insurance
134 coverage.

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

140 ~~(i)~~ (h) An employer may not hire any person or group to self-administer claims under this
141 chapter as a third-party administrator unless the person or group has been determined to be
142 qualified to be a third-party administrator by the Insurance Commissioner pursuant to rules
143 adopted by the ~~board of managers or~~ industrial council. Any person or group whose status as a
144 third-party administrator has been revoked, suspended, or terminated by the Insurance
145 Commissioner shall immediately cease administration of claims and shall not administer claims
146 unless subsequently authorized by the Insurance Commissioner.

147 ~~(j)~~ All regulatory, oversight and document-gathering authority provided to the commission
148 under this section shall transfer to the Insurance Commissioner and the industrial council upon
149 termination of the commission.

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

1 ~~If any employer is adjudicated to be outside the lawful scope of this chapter, the chapter~~
2 ~~shall not apply to him or her or his or her employee; or if any employee is adjudicated to be outside~~
3 ~~the lawful scope of this chapter, because of remoteness of his or her work from the hazard of his~~
4 ~~or her employer's work, the adjudication shall not impair the validity of this chapter in other~~
5 ~~respects and in every case an accounting in accordance with the justice of the case shall be had~~
6 ~~of moneys received. If the provisions of this chapter for the creation of the workers' compensation~~
7 ~~fund, or the provisions of this chapter making the compensation to the employee provided in it~~
8 ~~exclusive of any other remedy on the part of the employee, is held invalid, the entire chapter shall~~
9 ~~be invalidated and an accounting according to the justice of the case shall be had of money~~
10 ~~received. In other respects an adjudication of invalidity of any part of this chapter shall not affect~~
11 ~~the validity of the chapter as a whole or any part of this chapter. If any provision of this chapter~~
12 ~~or the application of such provision to any circumstance is held to be unconstitutional or otherwise~~
13 ~~invalid, the remainder of this chapter or the application of the provisions to other circumstances~~
14 ~~shall not be affected thereby. The Legislature hereby declares that it would have passed the~~

15 remainder of this chapter if it had known that such provision, or its application to any
16 circumstances, would be declared unconstitutional or otherwise invalid.

§23-2-13. Interest on past-due payments; reinstatement agreements.

1 ~~Effective July 1, 1999, payments unpaid on the date on which due and payable shall~~
2 ~~immediately begin bearing interest as specified in this section. The interest rate per annum for~~
3 ~~each fiscal year shall be calculated as the greater of the commission's current discount rate or~~
4 ~~the prime rate plus four percent, each rounded to the nearest whole percent. The discount rate~~
5 ~~shall be determined by the board of managers on an annual basis. The prime rate shall be the~~
6 ~~rate published in the *Wall Street Journal* on the last business day of the commission's prior fiscal~~
7 ~~year reflecting the base rate on corporate loans posted by at least seventy five percent of the~~
8 ~~nation's thirty largest banks. This same rate of interest shall be applicable to all reinstatement~~
9 ~~agreements entered into by the commission pursuant to section five of this article on and after~~
10 ~~the effective date of this section: *Provided*, That if an employer enters into a subsequent~~
11 ~~reinstatement agreement within seven years of the date of the first agreement, the interest rate~~
12 ~~shall be eighteen percent per annum. Interest shall be compounded quarterly until payment plus~~
13 ~~accrued interest is received by the commission: *Provided, however*, That on and after the date of~~
14 ~~execution of a reinstatement agreement, for determining future interest on any past-due premium,~~
15 ~~premium deposit, and past compounded interest thereon, any reinstatement agreement entered~~
16 ~~into by the commission shall provide for a simple rate of interest, determined in accordance with~~
17 ~~the provisions of this section which is not subject to change during the life of the reinstatement~~
18 ~~agreement for the future interest. Interest collected pursuant to this section shall be paid into the~~
19 ~~workers' compensation fund: *Provided further*, That in no event shall the rate of interest charged~~
20 ~~a political subdivision of the state or a volunteer fire department pursuant to this section exceed~~
21 ~~ten percent per annum. The interest due on payments pursuant to §23-2-9(d)(1) and §23-2C-~~
22 ~~8(d)(1) of this code shall be the prime rate plus four percent rounded to the nearest whole~~
23 ~~percent. The prime rate shall be the rate published in the *Wall Street Journal* on the last business~~

24 day of the prior fiscal year reflecting the base rate on corporate loans posted by at least 75 percent
25 of the nation's 30 largest banks: *Provided*, That in no event shall the rate of interest charged to a
26 political subdivision 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 ~~executive director made under the provisions of this article~~ Insurance
4 Commissioner, the employer is entitled to file a ~~petition demanding a~~ written demand for hearing
5 upon the decision or action in accordance with §33-2-13 of this code. The ~~petition~~ written demand
6 must be filed within 30 days of the employer's receipt of notice of the disputed ~~executive director's~~
7 Insurance Commissioner's decision or action or, in the absence of such receipt, within 60 days of
8 the date of the ~~executive director's making the disputed~~ decision or ~~taking the disputed~~ action,
9 the time limitations being hereby declared to be a condition of the right to litigate the decision or
10 action and therefore jurisdictional.

11 The employer's ~~petition~~ written demand shall clearly identify the decision or action
12 disputed and the bases upon which the employer disputes the decision or action. Upon receipt of
13 a ~~petition~~ written demand, the ~~executive director~~ Insurance Commissioner shall schedule a

14 hearing which shall be conducted in accordance with the provisions of §29A-5-1 *et seq.* and §33-
15 2-13 of this code. An appeal from a final decision of the ~~executive director~~ Insurance
16 Commissioner shall be taken in accord with the provisions of ~~articles five and six of said chapter~~
17 ~~W.Va. Code: *Provided*, That all appeals shall be taken to the circuit court of Kanawha County~~
18 §33-2-13 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 ~~and the successor to the~~
15 ~~commissioner~~ shall be allowed statutory subrogation with regard to only medical payments paid as
16 of the date of the recovery: *Provided*, That with respect to any recovery arising out of a cause of
17 action that arose or accrued prior to July 1, 2003, any money received by the ~~commissioner~~
18 Insurance Commissioner or self-insured employer as subrogation to medical benefits expended
19 on behalf of the injured or deceased worker shall not exceed 50 percent of the amount received

20 from the third party as a result of the claim made by the injured worker, his or her dependents or
21 personal representative, after payment of attorneys' fee and costs, if such exist.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (1) A means for employers to obtain workers' compensation insurance that is reasonably
34 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 further purpose of this article is to transfer New Fund assets relating to the workers'~~
38 ~~compensation insurance business to the company, including a reasonable level of policyholder~~
39 ~~surplus, and for the company to assume the New Fund liabilities related to the transferred assets.~~
40 ~~It is the intent of this article to provide for the initial capitalization of the company to comply with~~
41 ~~and to meet the requirements of section 351 and related sections of the Internal Revenue Code.~~
42 The employers' mutual insurance company contemplated and created as the successor to the
43 former Workers' Compensation Commission in this article began operation on January 1, 2006.
44 The state opened to a private, competitive market for workers' compensation insurance on July
45 1, 2008. This section remains in this code for historical purposes.

§23-2C-2. Definitions.

1 ~~(a) "Executive director" means the Executive Director of the West Virginia Workers'~~
2 ~~Compensation Commission as provided in section one b, article one of this chapter.~~

3 ~~(b) "Commission" means the West Virginia Workers' Compensation Commission as~~
4 ~~provided by section one, article one of this chapter.~~

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

7 ~~(d) "Company" or "successor to the commission" means the employers' mutual insurance~~
8 ~~company created pursuant to the terms of this article.~~

9 ~~(e)~~ (b) "Policy default" means a policyholder that has failed to comply with the terms of its
10 workers' compensation insurance policy and is consequently without workers' compensation
11 insurance coverage.

12 ~~(f)~~ (c) "Workers' compensation insurance" means insurance which provides all
13 compensation and benefits required by this chapter.

14 ~~(g)~~ (d) "Insurer" includes:

15 (1) A self-insured employer; and

16 (2) A private carrier.

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

18 ~~(i)~~ "Mutualization Transition Fund" is a fund over which the State Treasurer is custodian.
19 Moneys transferred or otherwise payable to the Mutualization Transition Fund shall be deposited
20 in the State Treasury to the credit of the Mutualization Transition Fund. Disbursements shall be
21 made from the Mutualization Transition Fund upon requisitions signed by the executive director,
22 and, upon termination of the commission, the Insurance Commissioner, and shall be reasonably
23 related to the legal, operational, consultative and human resource related expenses associated
24 with the establishment of the company and the transferring of personnel from the commission to
25 the company.

26 ~~(j)~~ "New Fund" means a fund owned and operated by the commission and, upon
27 termination of the commission, the successor organization of the West Virginia Workers'
28 Compensation Commission and consists of those funds transferred to it from the Workers'
29 Compensation Fund and any other applicable funds. New Fund includes all moneys due and
30 payable to the Workers' Compensation Fund for the quarters ending September 30, 2005, and
31 December 31, 2005, which have not been collected by the Workers' Compensation Fund as of
32 December 31, 2005.

33 ~~(k)~~ "New Fund liabilities" means all claims payment obligations (indemnity and medical
34 expenses) for all claims, actual and incurred but not reported, for any claim with a date of injury
35 or last exposure on or after July 1, 2005: *Provided*, That New Fund liabilities begin with claims
36 payments becoming due and owing on said claims on or after January 1, 2006.

37 ~~(A)~~ (f) "Old Fund" means a fund held by the State Treasurer's office consisting of those
38 funds transferred to it from the defunct Workers' Compensation Fund or other sources and those
39 funds due and owing the defunct Workers' Compensation Fund as of June 30, 2005, that are
40 thereafter collected. The Old Fund and assets in the fund remain property of the state and do not
41 novate or otherwise transfer to the company after the transition to a private market.

42 ~~(m)~~ (g) “Old Fund liabilities” mean all claims payment obligations (indemnity and medical
43 expenses), related liabilities and appropriate administrative expenses necessary for the
44 administration of all claims, actual and incurred but not reported, for any claim with a date of injury
45 or last exposure on or before June 30, 2005: *Provided*, That Old Fund liabilities include all claims
46 payments for any claim, regardless of date of injury or last exposure, through December 31, 2005:
47 *Provided, however*, That Old Fund liabilities include all claims with dates of injuries or last
48 exposure prior to July 1, 2004, for bankrupt self-insured employers that had defaulted on their
49 claims obligations which ~~have been~~ were recognized by the ~~commission~~ former Workers’
50 Compensation Commission in its actuarially determined liability number as of June 30, 2005.

51 ~~(n)~~ (h) “Private carrier” means any insurer or the legal representative of an insurer
52 authorized by the Insurance Commissioner to provide workers’ compensation insurance pursuant
53 to this chapter. The term does not include a self-insured employer or private employers ~~but does~~
54 ~~include any successor to the commission.~~

55 ~~(o)~~ (i) “Uninsured Employer Fund” means a fund held by the State Treasurer’s office
56 consisting of those funds transferred to it from the defunct Workers’ Compensation Fund and any
57 other source. Disbursements from the Uninsured Employer Fund shall be upon requisitions
58 signed by the Insurance Commissioner, and as otherwise set forth in an exempt legislative rule
59 promulgated by the ~~Workers’ Compensation Board of Managers~~ Industrial Council.

60 ~~(p)~~ (j) “Self-Insured Employer Guaranty Risk Pool” is a fund held by the State Treasurer’s
61 office consisting of those funds transferred to it from the guaranty pool created pursuant to 85
62 CSR 19 (2007) and any future funds collected through continued administration of that exempt
63 legislative rule as administered by the Insurance Commissioner. Disbursements shall be made
64 from the Self-Insured Employer Guaranty Risk Pool upon requisitions signed by the Insurance
65 Commissioner. The obligations of the fund are as provided in 85 CSR 19 (2007).

66 ~~(q)~~ (k) “Self-Insured Employer Security Risk Pool” is a fund held by the State Treasurer
67 consisting of those funds paid into it through the Insurance Commissioner’s administration of 85

68 CSR 19 (2007). Disbursement from the fund shall be made from the Self-Insured Employer
69 Security Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of
70 the fund are as provided in 85 CSR 19: *Provided*, That the liabilities are limited to those self-
71 insured employers who default on their claims obligations after the termination of the ~~commission~~
72 former Workers' Compensation Commission.

73 ~~(r) "Private Carrier Guaranty Fund" is a fund held by the State Treasurer's office consisting~~
74 ~~of funds deposited pursuant to this article. Disbursements shall be made from the Private Carrier~~
75 ~~Guaranty Fund upon requisitions signed by the Insurance Commissioner. The obligations of the~~
76 ~~fund are as provided in this article. The Private Carrier Guaranty Fund terminates on June 30,~~
77 ~~2008, and any moneys remaining in the fund on the date of its termination shall be transferred to~~
78 ~~the Old Fund.~~

79 ~~(s) "Assigned Risk Fund" is a fund held by the State Treasurer's office consisting of funds~~
80 ~~deposited pursuant to this article. Disbursements shall be made from the Assigned Risk Fund~~
81 ~~upon requisitions signed by the Insurance Commissioner. The obligations of the fund are as~~
82 ~~provided in this article. The Assigned Risk Fund terminates on June 30, 2008, and any moneys~~
83 ~~remaining in the fund on the date of its termination shall be transferred to the Old Fund.~~

84 ~~(t) "Comprehensive financial plan" means the plan compiled by the director for~~
85 ~~acceptance by the Insurance Commissioner identifying and forecasting cash flows, funding~~
86 ~~sources, debt terms and structures and scheduled amortization and permanent resolution of all~~
87 ~~Old Fund liabilities. The comprehensive financial plan shall provide for the retirement of the~~
88 ~~revenue bonds authorized by article two d of this chapter and all realized and potential claims~~
89 ~~against the Old Fund shall be fully reserved. The comprehensive financial plan may include any~~
90 ~~other information the Insurance Commissioner may require as a basis for managing the post-~~
91 ~~transition fiscal soundness of the Old Fund.~~

92 ~~(u)~~ (l) “Voluntary market” means the workers’ compensation insurance market in which
93 insurers voluntarily offer coverage to applicants who meet the insurers’ underwriting standards or
94 guidelines.

**~~§23-2C-3. Creation of employers’ mutual insurance company as successor organization of
the West Virginia Workers’ Compensation Commission~~ Private carriers not subject
to certain premium taxes, surcharges, and credits; regulatory surcharge imposed
on private carriers and self-insured employers.**

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) (a) If the commission has been terminated, effective upon the termination, private~~
55 ~~Private carriers including the company, are not subject to payment of insurance premium taxes,~~
56 ~~surcharges, and credits contained in §33-3-1 et seq. of this code on premiums received for~~
57 ~~workers' compensation insurance coverage under this chapter. In lieu thereof, the workers'~~
58 ~~compensation insurance market is subject to the 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 90 days of receipt of~~
66 ~~premium payments;~~

67 ~~(B) (1)(A) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the~~
68 ~~surcharge set forth in the preceding paragraph, each private carrier shall collect a surcharge in~~
69 ~~the amount of five and five-tenths percent of the premium collected plus the total of all premium~~
70 ~~discounts based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013,~~

71 and every five years thereafter, the ~~commissioner~~ Insurance Commissioner shall review the
72 percentage surcharge and determine a new percentage as he or she deems necessary; and

73 ~~(C)~~ (B) The amounts required to be collected under ~~paragraph (B) of this subdivision~~ §23-
74 2C-3(a)(1)(A) of this code shall be remitted to the Insurance Commissioner on or before the
75 twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except
76 for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the
77 succeeding year.

78 (2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge
79 to be remitted on a quarterly basis by self-insured employers and said percentage shall be
80 calculated by dividing the previous year's self-insured payroll in the state into the portion of the
81 Insurance Commissioner's budget amount attributable to regulation of the self-insured employer
82 market. This resulting percentage shall be applied to each self-insured employer's payroll and the
83 resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The
84 Industrial Council may promulgate a rule for implementation of this section. ~~The company, all~~
85 ~~other~~ All private carriers and ~~all~~ self-insured employers shall furnish the Insurance Commissioner
86 with all required information and cooperate in all respects necessary for the Insurance
87 Commissioner to perform the duties set forth in this section and in other provisions of this chapter
88 and chapter 33 of this code. The surcharge shall be calculated so as to only defray the costs
89 associated with the administration of this chapter and the funds raised shall not be used for any
90 other purpose ~~except as set forth in subdivision (4) of this subsection.~~

91 ~~(3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as~~
92 ~~annually determined, by May 1 of each year, by the Insurance Commissioner to produce \$45~~
93 ~~million annually, of each policyholder's periodic premium amount for workers' compensation~~
94 ~~insurance: *Provided*, That the surcharge rate on policies issued or renewed on or after July 1,~~
95 ~~2008, shall be nine percent of the premium collected plus the total of all premium discounts based~~
96 ~~on deductible provisions that were applied.~~

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

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

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

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

145 ~~(h) Notwithstanding any other provisions of this section to the contrary, after December~~
146 ~~31, 2018, no surcharges may be assessed under subdivision (3), subsection (f) of this section or~~
147 ~~subsection (g) of this section. Except as otherwise provided in this subsection, the provisions of~~
148 ~~subdivision (3), subsection (f) of this section and subsection (g) of this section are terminated and~~

149 shall be of no force or effect beginning on and after January 1, 2019: ~~Provided, That liability for~~
150 ~~surcharges assessed under subdivision (3), subsection (f) of this section for periods prior to~~
151 ~~January 1, 2019, shall continue until paid.~~

**§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. ~~Creation~~ Continuation of new fund, old fund, mutualization transition fund,
uninsured employer fund, self-insured employer guaranty risk pool, and self-
insured employer security risk pool ~~private carrier guaranty fund, and assigned risk
fund.~~**

1 (a) ~~Effective upon the date upon which this enactment is made effective by the Legislature,~~
2 ~~there~~ There is hereby ~~created~~ continued in the State Treasury a "Workers' Compensation Old
3 Fund", "~~Workers' Compensation New Fund~~", "~~Mutualization Transition Fund~~", "Workers'
4 Compensation Uninsured Employers' Fund", "Self-insured Employer Guaranty Risk Pool", and
5 "Self-insured Employer Security Risk Pool". "~~Private Carrier Guaranty Fund~~", and an "~~Assigned~~
6 ~~Risk Fund~~". The ~~Executive Director of the Workers' Compensation Commission~~ Insurance
7 Commissioner shall have full authority to administer the Old Fund, ~~the new fund, the mutualization~~
8 ~~transition fund, the Uninsured Employers' Fund, the Self-Insured Employer Guaranty Risk Pool,~~
9 and the Self-Insured Employer Security Risk Pool. ~~and the private carrier guaranty fund. until~~
10 ~~termination of the commission. As soon as practicable upon the establishment of the~~
11 ~~mutualization transition fund, the executive director shall cause \$35 million to be transferred from~~
12 ~~the Workers' Compensation Fund into the mutualization transition fund. All unencumbered funds~~
13 ~~remaining in the mutualization transition fund as of termination of the commission shall be~~
14 ~~transferred into the private carrier guaranty fund or, if the proclamation set forth in this article has~~

15 ~~not been issued, back to the Workers' Compensation Fund. Expenditures from the funds~~
16 ~~established by this section shall be upon appropriation of the Legislature except that during the~~
17 ~~fiscal year ending June 30, 2005, expenditures from the mutualization transition fund up to~~
18 ~~amounts expended for the purposes of this article are authorized rather than pursuant to an~~
19 ~~appropriation by the Legislature.~~

20 ~~(b) If the proclamation set forth in this article is issued, then upon termination of the~~
21 ~~commission, the funds contained in the Workers' Compensation Fund shall be disbursed as~~
22 ~~follows: (1) A minimum of \$300 million into the Workers' Compensation Old Fund, the exact~~
23 ~~amount of which shall be set forth in the Governor's proclamation provided in this article; (2) \$5~~
24 ~~million into the uninsured employers' fund; and (3) the remainder into the new fund. Additionally,~~
25 ~~the funds contained in the guaranty pool provided in 85 CSR §19 (2004) shall be transferred into~~
26 ~~the self-insured employer guaranty risk pool created in this article.~~

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

1 ~~(a) The State Treasurer shall be the custodian of the workers' compensation Old Fund,~~
2 ~~workers' compensation the Uninsured Employer Fund, the Self-Insured Employer Guaranty Risk~~
3 ~~Pool, and the Self-Insured Employer Security Risk Pool, the Private Carrier Guaranty Fund, and~~
4 ~~the Assigned Risk Fund and moneys payable to each of these funds shall be deposited in the~~
5 ~~State Treasury to the credit of the funds. Each fund shall be a separate and distinct fund upon the~~
6 ~~books and records of the Auditor and Treasurer. Disbursements from these funds shall be made~~
7 ~~upon requisitions signed by the executive director and, effective upon termination of the~~
8 ~~commission, the Insurance Commissioner. The workers' compensation Old Fund, the workers'~~
9 ~~compensation Uninsured Employer Fund, the Self-Insured Employer Guaranty Risk Pool, and the~~
10 ~~Self-Insured Employer Security Risk Pool the Private Carrier Guaranty Fund, and the Assigned~~
11 ~~Risk Fund are participant plans as defined in §12-6-2 of this code and are subject to the provisions~~
12 ~~of §12-6-9a of this code. The funds may be invested by the Investment Management Board in~~
13 ~~accordance with §12-6-1 et seq. of this code.~~

14 ~~(b) If the Governor issues the proclamation set forth in this article, then, effective upon~~
15 ~~termination of the commission, all remaining assets and funds contained in the Workers'~~
16 ~~Compensation Fund which are payable to the New Fund shall be so disbursed and paid to the~~
17 ~~company by communication of the executive director to the State Treasurer or other appropriate~~
18 ~~state official prior to the termination of the commission.~~

§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

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

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

26 (b) *Payments from the fund.* —

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

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

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

36 If a claim is filed against the Uninsured Employer Fund, the Insurance Commissioner or
37 his or her third-party administrator shall: (1) Accept the claim into the fund if it is determined that
38 the employer was required to maintain workers' compensation coverage with respect to the
39 injured worker but failed to do so; (2) reject the claim if it is determined that the employer
40 maintained such coverage or was not required to do so; or (3) in a claim involving the availability
41 of benefits pursuant to §23-2-1d of this code, either reject or conditionally accept the claim. An
42 aggrieved party may file a protest with the Office of Judges, or Board of Review upon the
43 termination of the Office of Judges, to any decision by the Insurance Commissioner or the third-
44 party administrator to accept or reject a claim into the fund, as well as to any claims decisions
45 made with respect to any claim accepted into the fund and such protests shall be determined in
46 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 ~~before the Office of Judges~~ involving the decision
48 to accept or refuse to accept a claim into the fund, the employer has the burden of proving that it
49 either provided mandatory workers' compensation insurance coverage or that it was not required
50 to do so.

51 (d) *Employer liability.* —

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

56 (2) The Insurance Commissioner:

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

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

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

67 (3) In addition to any other liabilities provided in this section, the Insurance Commissioner
68 may impose an administrative penalty of not more than \$10,000 against an employer if the
69 employer fails to provide mandatory coverage required by this chapter. All penalties and other
70 moneys collected pursuant to this section shall be deposited into the ~~Workers' Compensation~~
71 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) If a mutual insurance company is established pursuant to this article, a~~ A person who
2 was employed by the former Workers' Compensation Commission upon its termination or was
3 laid off by the employers' mutual insurance company created in this article on or before June 30,
4 2008, is entitled to be placed on an appropriate reemployment list maintained by the Department
5 of Personnel and to be allowed a preference on that list. The Department of Personnel shall
6 maintain such an employee on the reemployment list indefinitely, or until the employee has
7 declined three offers of employment at a paygrade substantially similar to that of his or her position
8 upon termination of the former Workers' Compensation Commission, or until he or she is
9 reemployed by the executive branch of state government, whichever occurs earlier.

10 ~~(1) Is employed on January 1, 2005, by the commission;~~

11 ~~(2) Was employed by the commission upon its termination; and~~

12 ~~(3) Is laid off by the company on or before June 30, 2008, is entitled to be placed on an~~
13 ~~appropriate reemployment list maintained by the Department of Personnel and to be allowed a~~
14 ~~preference on that list. The Department of Personnel shall maintain such an employee on the~~
15 ~~reemployment list indefinitely, or until the employee has declined three offers of employment at a~~
16 ~~paygrade substantially similar to that of his or her position upon termination of the commission,~~
17 ~~or until he or she is reemployed by the executive branch of state government, whichever occurs~~
18 ~~earlier.~~

19 ~~(b) The executive director may select former bureau of employment program employees~~
20 ~~who are, upon the termination of the commission, employees of the office of information services~~

21 ~~and communication and who enter into an employment contract with the company before~~
22 ~~December 1, 2005, to become employees of the company and said employees shall be afforded~~
23 ~~the benefits of this section.~~

§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) Effective upon termination of the commission, all subscriber policies with the~~
2 ~~commission shall novate to the company and all employers shall purchase workers' compensation~~
3 ~~insurance from the company unless permitted to self-insure their obligations. The company shall~~
4 ~~assume responsibility for all new fund obligations of the subscriber policies which novate to the~~
5 ~~company or which are issued thereafter. Each subscriber whose policy novates to the company~~
6 ~~shall also have its advanced deposit credited to its account with the company. Each employer~~
7 ~~purchasing workers' compensation insurance from the company has the right to designate a~~
8 ~~representative or agent to act on its behalf in any and all matters relevant to coverage and claims~~
9 ~~administered by the company.~~

10 ~~(b) (a) Effective July 1, 2008, an~~ An employer may elect to ~~(1) continue to purchase~~
11 ~~workers' compensation insurance from the company; (2) purchase workers' compensation~~
12 ~~insurance from another a private carrier licensed and otherwise authorized to transact workers'~~
13 ~~compensation insurance in this state or (3) self-insure its obligations if it satisfies all requirements~~
14 ~~of this code to so self-insure and is permitted to do so. Provided, That all state and local~~
15 ~~governmental bodies, including, but not limited to, all counties and municipalities and their~~
16 ~~subdivisions, and including all boards, colleges, universities, and schools, shall continue to~~
17 ~~purchase workers' compensation insurance from the company through June 30, 2010: Provided,~~

18 ~~however, That the company may not cancel or refuse to renew a policy of a state or local~~
19 ~~governmental body prior to July 1, 2011, except for failure of consideration to be paid by the~~
20 ~~policyholder or for refusal to comply with a premium audit. The company and other private Private~~
21 carriers are permitted to sell workers' compensation insurance through licensed agents in the
22 state. To the extent that a private carrier markets workers' compensation insurance through a
23 licensed agent, it is subject to all applicable provisions of chapter 33 of this code.

24 ~~(e) (b) Every employer shall continuously post a notice upon its premises in a conspicuous~~
25 ~~place identifying its workers' compensation insurer. The notice must include the name, business~~
26 ~~address, and telephone number of the insurer and of the person to contact with questions about~~
27 ~~a claim. The employer shall at all times maintain the notice provided for the information of his or~~
28 ~~her employees. Release of employer policy information and status by the Industrial Council and~~
29 ~~the Insurance Commissioner shall be governed by section four, article one of this chapter.~~

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

35 ~~(e) (d) Effective January 1, 2009, the company may decline to offer coverage to any~~
36 ~~applicant. Private carriers and effective January 1, 2009, the company may cancel a policy upon~~
37 ~~the issuance of 30 days' written advance notice to the policyholder and may refuse to renew a~~
38 ~~policy upon the issuance of 60 days' written advance notice to the policyholder: *Provided*, That~~
39 ~~cancellation of the policy by the carrier for failure of consideration to be paid by the policyholder~~
40 ~~or for refusal to comply with a premium audit is effective after 10 days' advance written notice of~~
41 ~~cancellation to the policyholder.~~

42 ~~(f) (e) Every private carrier shall notify the Insurance Commissioner as follows: (1) Of the~~
43 ~~issuance or renewal of insurance coverage, within 30 days of: (A) The effective date of coverage;~~

44 or (B) the private carrier's receipt of notice of the employer's operations in this state, whichever is
45 later; (2) of a termination of coverage by the private carrier due to refusal to renew or cancellation,
46 at least 10 days prior to the effective date of the termination; and (3) of a termination of coverage
47 by an employer, within 10 days of the private carrier's receipt of the employer's request for such
48 termination; the notifications shall be on forms developed or in a manner prescribed by the
49 Insurance Commissioner.

50 ~~(g)~~ (f) For the purposes of ~~subsections (e) and (f) of this section~~ §23-2C-15(d) and (e) of
51 this code, the transfer of a policyholder between insurance companies within the same group is
52 not considered a cancellation or refusal 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) Notwithstanding any provision of this code to the contrary, the company shall be the~~
2 ~~initial third party administrator of the Old Fund, Uninsured Employer Fund, Self-Insured Employer~~
3 ~~Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, and Private Carrier Guaranty Fund~~
4 ~~from the termination of the commission and thereafter for a term of at least six months but not~~
5 ~~more than three years pursuant to an agreement to be entered into between the Insurance~~
6 ~~Commissioner and the company prior to the termination of the commission. The company shall~~
7 ~~be paid a reasonable fee for services provided. The company's administrative duties may include,~~
8 ~~but not be limited to, receipt of all claims, processing said claims, providing for the payment of~~
9 ~~said claims through the State Treasurer's office or other applicable state agency, and ensuring,~~
10 ~~through the selection and assignment of counsel, that claims decisions are properly defended.~~
11 ~~The administration of said funds thereafter shall be subject to the procedures set forth~~ §5A-3-1 et
12 seq. of this code.

13 ~~(b)~~ (a) The Insurance Commissioner shall review claims determined to be payable from
14 said funds the Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool,

15 Self-Insured Employer Security Risk Pool, and Private Carrier Guaranty Fund and may contest
16 the determination pursuant to the provisions of §23-5-1 *et seq.* of this code. The Insurance
17 Commissioner may retain a third-party administrator for said funds. The administrative duties
18 may include, receipt of all claims, processing said claims, providing for the payment of said claims
19 through the State Treasurer's office or other applicable state agency, and ensuring, through the
20 selection and assignment of counsel, that claims decisions are properly defended.

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

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

28 (e) (d) During the fiscal years beginning July 1, 2019, July 1, 2020, July 1, 2021, July 1,
29 2022, and July 1, 2023, the Insurance Commissioner may, in his or her discretion, transfer special
30 revenue moneys contained in the Insurance Commission Fund to the Old Fund in any fiscal year
31 in which the Insurance Commissioner has determined, and an independent Auditor has attested
32 thereto, that a deficit balance existed in the Old Fund for the prior fiscal year.

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

1 (a)(1) ~~The rate-making provisions and premium provisions contained in article two of this~~
2 ~~chapter shall not be applicable to the company or other private carriers.~~ Rates for workers'
3 compensation insurance are subject to the provisions of this section, §23-2C-18a of this code,
4 and §33-20-1 *et seq.* of this code.

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

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

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

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

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

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

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

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

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

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

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

34 discriminatory because different premiums result for policyholders with similar exposure to loss
35 but different expense factors, or similar expense factors but different exposure to loss, so long as
36 the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if
37 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) The company and the Insurance Commissioner shall be provided extraordinary powers~~
15 ~~to collect any premium amounts payable to the workers' compensation fund or the new fund and~~
16 ~~due from July 1, 2005, through June 30, 2008: Those powers shall include: (1) Withholding of~~
17 ~~coverage effective January 1, 2006: Employers without coverage shall immediately be deprived~~
18 ~~of the benefits and protection afforded by this chapter, including section six, article two of this~~
19 ~~chapter and the employer is liable as provided in section eight of said article; (2) the right to~~
20 ~~maintain a civil action against all officers and directors of the employer individually for collection~~

21 of the premium owed; and ~~(3) the right to immediately report the employers to the state Tax~~
22 ~~Department and other state agencies to secure suspension of any and all licenses, certificates,~~
23 ~~permits, registrations and other similar approval documents necessary for the employer to~~
24 ~~conduct business in this state.~~

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

29 (1) The term “employer default” means having an outstanding balance or liability to the
30 Old Fund or to the Uninsured Employers’ Fund or being in policy default, as defined in §23-2C-2
31 of this code, or failure to maintain mandatory workers’ compensation coverage. An employer is
32 not in default if it has entered into a repayment agreement with the Insurance Commissioner and
33 remains in compliance with the obligations under the repayment agreement.

34 (2) The term “agency” includes any unit of state government such as officers, agencies,
35 divisions, departments, boards, commissions, authorities, or public corporations.

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

45 ~~(g)~~ (f) The Insurance Commissioner shall propose rules for adoption by the industrial
46 council to effectuate the purposes of this section including the conditions under which agencies

47 shall comply with the provisions of ~~subsection (e) of this section~~ §23-2C-19(d) of this code and
48 specifying how notice of default shall be given by the ~~commissioner~~ Insurance Commissioner.

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

1 ~~(a) A self-insured employer shall continue to comply with rules promulgated by the board~~
2 ~~of managers governing the self-administration of its claims and the successor to the commission~~
3 ~~shall also comply with the rules promulgated by the board of managers governing the self-~~
4 ~~administration of claims.~~

5 ~~(b) (a) The successor to the commission, any other private carrier and any employer that~~
6 ~~self-insures its risk and self-administers its claims shall exercise all authority and responsibility~~
7 ~~granted to the commission in this chapter and provide notices of action taken to effect the~~
8 ~~purposes of this chapter to provide benefits to persons who have suffered injuries or diseases~~
9 ~~covered by this chapter. The successor to the commission private~~ Private ~~carriers and self-insured~~
10 ~~employers shall at all times be bound and shall comply fully with all of the provisions of this~~
11 ~~chapter. Furthermore, all of the provisions contained in §23-4-1 et seq. of this code pertaining to~~
12 ~~disability and death benefits are binding on and shall be strictly adhered to by the successor to~~
13 ~~the commission, private carriers, and the self-insured employer in their administration of claims~~
14 ~~presented by employees of the self-insured employer~~ private carriers and self-insured employers.

15 ~~(c) (b) Upon termination of the commission, the~~ The ~~Occupational Pneumoconiosis Board~~
16 ~~shall be transferred to the Insurance Commissioner and shall be administered by the Insurance~~
17 ~~Commissioner. The company and other private carriers shall have all authority and responsibility~~
18 ~~granted to the self-insured employers in the administration and processing of occupational~~
19 ~~pneumoconiosis claims.~~ Private carriers and self-insured employers shall have all authority and
20 responsibility in the administration and processing of occupational pneumoconiosis claims.

21 ~~(d) (c) Upon termination of the commission, all claims allocation responsibilities shall~~
22 ~~transfer from the commission to the Insurance Commissioner.~~ Upon termination of the former

23 Workers' Compensation Commission, claims allocation responsibilities transferred to the
24 Insurance Commissioner.

25 ~~(e) (d) Upon termination of the commission, the third-party administrator of the Old Fund~~
26 ~~shall have all administrative and adjudicatory authority vested in the commission in administering~~
27 ~~old law liabilities and otherwise processing and deciding old law claims. The Insurance~~
28 Commissioner's third-party administrator for the Old Fund has administrative and adjudicatory
29 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.**

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

4 (b) Any administrative fines or remedies provided in this chapter or chapter 33 of this code
5 or rules promulgated by the ~~Workers' Compensation Commission or the Insurance Commissioner~~
6 are the exclusive civil remedies for any violation of this chapter committed by a private carrier or
7 a third-party administrator or any agent or employee of a private carrier or a third-party
8 administrator.

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

18 time of the denial which is relevant and probative and supports the denial of the award or
19 authorization. Payment of attorney's fees and costs awarded under this subsection will be made
20 to the claimant at the conclusion of litigation, including all appeals, of the claimant's protest of the
21 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.]

1

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

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

1 ~~(a) For the relief of persons who are receiving benefits pursuant to a permanent total~~
2 ~~disability award in amounts less than thirty-three and one-third percent of the average weekly~~
3 ~~wage for the State of West Virginia per month, and for the relief of widows who are receiving~~
4 ~~benefits on account of the death of an employee in amounts less than thirty-three and one-third~~
5 ~~percent of the average weekly wage in the State of West Virginia per month, and for the relief of~~
6 ~~children of employees deceased before 1967, who are under the age of twenty-three and who~~
7 ~~are full-time students, and for the relief of other persons who are receiving dependents' benefits~~
8 ~~on account of the death of an employee in amounts less than the specific monetary amounts set~~
9 ~~forth in section ten, article four of this chapter and in effect as of July 1, 1973, there is continued~~
10 ~~a separate fund, heretofore known as the "Disabled Workmen's Relief Fund", and which shall~~
11 ~~hereafter be known as the "Disabled Workers' Relief Fund", which shall consist of any sums that~~
12 ~~are, from time to time, made available to carry out the objects and purposes of this article. The~~
13 ~~fund shall be in the custody of the State Treasurer and disbursements from the fund shall be~~
14 ~~made upon requisition signed by the executive director to those persons entitled to participate in~~
15 ~~the fund and in such amounts to each participant that are provided in section three of this article.~~

16 ~~(b) Effective upon termination of the commission, the "Disabled Workers' Relief Fund"~~
17 ~~shall be administered by the successor to the commission and the administrative duties assigned~~
18 ~~to the executive director shall be transferred to the chief executive officer of the successor to the~~
19 ~~commission.~~

20 Persons who are receiving benefits from the Disabled Workers' Relief Fund at the time
21 the amendments made to this article by the Legislature during the 2022 regular session become
22 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 ~~which fund shall be separate from the Workers' Compensation Fund~~. The
6 Coal-Workers' Pneumoconiosis Fund shall consist of premiums and other funds paid to the fund
7 by employers, subject to the provisions of Title IV of the federal Coal Mine Health and Safety Act
8 of 1969, as amended, who shall elect to subscribe to the fund to ensure the payment of benefits
9 required by the Act for claims incurred under said Act, including all claims where the date of last
10 exposure is on or before December 31, 2005, without regard to 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 ~~Executive Director of the Workers' Compensation~~
15 ~~Commission to those persons entitled to participate in the fund: *Provided*, That effective upon the~~
16 ~~termination of the Workers' Compensation Commission, disbursement from the Coal-Workers'~~
17 ~~Pneumoconiosis Fund shall be made upon requisitions signed by the Insurance Commissioner.~~
18 ~~The Insurance Commissioner shall collect any unpaid premium and deposit the same in said fund.~~
19 The West Virginia Investment Management Board may invest any surplus, reserve, or other
20 moneys belonging to the Coal-Workers' Pneumoconiosis Fund in accordance with §12-6-1 *et seq.*
21 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 ~~executive~~

5 ~~director~~ Insurance Commissioner shall disburse the Coal-Workers' Pneumoconiosis Fund in the
6 amounts and to the persons as directed by the order. ~~Provided, That effective upon the~~
7 ~~termination of the Workers' Compensation Commission, disbursement from the Coal workers'~~
8 ~~Pneumoconiosis Fund shall be made upon requisitions signed by the Insurance Commissioner.~~

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

1 [Repealed.]

§23-4B-7. Administration.

1 ~~(a) The Coal Workers' Pneumoconiosis Fund shall be administered by the Executive~~
2 ~~Director of the Workers' Compensation Commission, who shall employ any employees necessary~~
3 ~~to 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 executive director.~~

7 ~~(b) Notwithstanding any provision of this code to the contrary, effective from the~~
8 ~~termination of the Workers' Compensation Commission, the The Coal-Workers' Pneumoconiosis~~
9 ~~Fund shall be administered by the Insurance Commissioner, who shall employ any employees~~
10 ~~and contract with any parties necessary to discharge his or her duties and responsibilities under~~
11 ~~this article. All payments of salaries and expenses of the employees and all expenses peculiar to~~
12 ~~the administration of this article shall be made by the State Treasurer from the Coal-Workers'~~
13 ~~Pneumoconiosis Fund upon requisitions signed by the Insurance Commissioner. *Provided, That*~~
14 ~~the employers' mutual insurance company established pursuant to article two-c of this chapter~~
15 ~~shall be the administrator of the Coal-Workers' Pneumoconiosis Fund for a term not to exceed~~
16 ~~three years following the termination of the Workers' Compensation Commission pursuant to an~~
17 ~~agreement to be entered into between the Insurance Commissioner and the Company prior to~~
18 ~~the termination of the Workers' Compensation Commission. The Company's administrative duties~~
19 ~~may include, but not be limited to, receipt of all claims, processing said claims, providing for the~~

20 payment of said claims through the State Treasurer's office and ensuring, through the selection
21 and assignment of counsel, that claims decisions are properly defended. Any contract entered
22 into by the Insurance Commissioner for the administration of the Coal-Workers' Pneumoconiosis
23 Fund thereafter shall be subject to the procedures set forth in article three, chapter five-a of this
24 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 and coverage provided by the
successor of the commission.**

1 Upon the termination of the ~~commission~~ former Workers' Compensation Commission, the
2 Coal-Workers' Pneumoconiosis Fund shall close and ~~the company shall offer insurance to provide~~
3 ~~for the benefits required by this article until at least December 31, 2008~~ to new subscribers. All
4 claims payment obligations, including indemnity benefits, medical benefits, administrative, and all
5 other expenses necessary for the administration and defense of claims, where the date of last
6 exposure is on or before December 31, 2005, without regard to the date the claim is filed, shall
7 be an obligation of the Coal-Workers' Pneumoconiosis Fund. ~~created in this article and not of~~
8 ~~the company.~~

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.]

NOTE: The purpose of this bill is to revise outdated provisions within Chapter 23 of the West Virginia Code, which pertains to workers' compensation. Much of the language in Chapter 23 is antiquated and predates the 2005/2006 regulatory transition from a state-operated monopolistic system for workers' compensation to a competitive, private market system. The bill also repeals certain sections and articles within Chapter 23 that are obsolete.

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