

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 485

BY SENATOR BLAIR

[Introduced February 5, 2018; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended, relating
2 to the termination of the Workers' Compensation Debt Reduction Fund assessment on
3 self-insured employers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

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

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

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

7 (B) Provide employer's liability insurance incidental to, and provided in connection with,
8 the insurance specified in §23-2C-3(a)(1)(A) of this code, including coal workers' pneumoconiosis
9 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 §23-2C-3(a) of this code:

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 15 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 §33-3-5b of this code. The
26 company shall furnish the Insurance Commissioner with all information and cooperate in all
27 respects necessary for the Insurance Commissioner to perform the duties set forth in this section
28 and in other provisions of this chapter and chapter 33 of this code. The Insurance Commissioner
29 shall monitor the economic viability of the company during its initial operation on not less than a
30 monthly basis, until the commissioner, in his or her discretion, determines that monthly reporting
31 is not necessary. In all other respects the company shall comply with the applicable provisions of
32 chapter 33 of this code.

33 (3) Subject to the provisions of §23-2C-3(b)(4) of this code, the Insurance Commissioner
34 may waive other requirements imposed on mutual insurance companies by the provisions of
35 chapter 33 of this code the Insurance Commissioner determines are necessary to enable the
36 company to begin insuring employers in this state at the earliest possible date.

37 (4) Within 40 months of the date of the issuance of its license to transact insurance, the
38 company shall comply with the capital and surplus requirements set forth in §33-3-5b(a) of this
39 code in effect on the effective date of this enactment, unless the deadline is extended by the
40 Insurance Commissioner.

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

44 only and not of the state or of any department, unit, agency, instrumentality, officer, or employee
45 of the state.

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

49 (e) The company is not subject to the provisions of §6-9A-1 *et seq.*, the provisions of §6C-
50 2-1 *et seq.*, the provisions of chapter 29B, the provisions of §5A-3-1 *et seq.*, the provisions of §29-
51 6-1 *et seq.*, or the provisions of chapter 12 of this code.

52 (f) If the commission has been terminated, effective upon the termination, private carriers,
53 including the company, are not subject to payment of premium taxes, surcharges and credits
54 contained in §33-3-1 *et seq.* of this code on premiums received for coverage under this chapter.
55 In lieu thereof, the workers' compensation insurance market is subject to the following:

56 (1)(A) Each fiscal year, the Insurance Commissioner shall calculate a percentage
57 surcharge to be collected by each private carrier from its policyholders. The surcharge percentage
58 shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible
59 payments by all employers into the portion of the Insurance Commissioner's budget amount
60 attributable to regulation of the private carrier market. This resulting percentage shall be applied
61 to each policyholder's premium payment and deductible payments as a surcharge and remitted
62 to the Insurance Commissioner. Said surcharge shall be remitted within 90 days of receipt of
63 premium payments;

64 (B) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the surcharge
65 set forth in the §23-2C-3(f)(1)(A) of this code, each private carrier shall collect a surcharge in the
66 amount of five and five-tenths percent of the premium collected plus the total of all premium
67 discounts based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013,
68 and every five years thereafter, the commissioner shall review the percentage surcharge and
69 determine a new percentage as he or she deems necessary;

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

74 (2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge
75 to be remitted on a quarterly basis by self-insured employers and said percentage shall be
76 calculated by dividing previous year's self-insured payroll in the state into the portion of the
77 Insurance Commissioner's budget amount attributable to regulation of the self-insured employer
78 market. This resulting percentage shall be applied to each self-insured employer's payroll and the
79 resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The
80 Industrial Council may promulgate a rule for implementation of this section. The company, all
81 other private carriers and all self-insured employers shall furnish the Insurance Commissioner
82 with all required information and cooperate in all respects necessary for the Insurance
83 Commissioner to perform the duties set forth in this section and in other provisions of this chapter
84 and chapter 33 of this code. The surcharge shall be calculated so as to only defray the costs
85 associated with the administration of this chapter and the funds raised shall not be used for any
86 other purpose except as set forth in §23-2C-3(f)(4) of this code.

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

93 (B) By May 1 each year, the self-insured employer community shall be assessed a
94 cumulative total of \$9 million: *Provided*, That notwithstanding any other provision of §23-2C-3(f)(3)
95 of this section or any other provision of this code to the contrary, the \$9 million assessment

96 terminates on June 30, 2018, and no further assessment pursuant to §23-2C-3(f)(3) of this code
97 may be made against the self-insured employer community after that date. The methodology for
98 the assessment shall be fair and equitable and determined by exempt legislative rule issued by
99 the Industrial Council. The amount collected pursuant to this subdivision shall be remitted to the
100 Insurance Commissioner for deposit in the Workers' Compensation Debt Reduction Fund created
101 in §23-2D-5 of this code: *Provided*, That notwithstanding any provision of this subdivision or any
102 other provision of this code to the contrary, if the budget shortfall, as determined by the state
103 Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by
104 Executive Order, redirect deposits of the amount collected pursuant to this subdivision, for any
105 period commencing after February 29, 2016, and ending before July 1, 2016, to the General
106 Revenue Fund, instead of to the fund otherwise mandated in this subdivision, in §23-2D-1 *et seq.*
107 of this code or in any other provision of this code: *Provided, however*, That notwithstanding any
108 provision of this subdivision or any other provision of this code to the contrary, the Governor may,
109 by Executive Order, redirect one half of the deposits of the amount collected pursuant to this
110 subdivision, for any period commencing after June 30, 2016, and ending before July 1, 2017, to
111 the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in
112 §23-2D-1 *et seq.* of this code or in any other provision of this code, until certification of the
113 Governor to the Legislature that an independent actuary has determined that the unfunded liability
114 of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety:
115 *Provided further*, That notwithstanding any provision of this subdivision or any other provision of
116 this code to the contrary, the Governor may, by Executive Order, redirect 75 percent of the
117 deposits of the amount collected pursuant to this subdivision, for any period commencing after
118 June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the
119 funds otherwise mandated in this subdivision, in §23-2D-1 *et seq.* of this code or in any other
120 provision of this code, until certification of the Governor to the Legislature that an independent

121 actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this
122 code, has been paid or provided for in its entirety.

123 (4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump
124 sum transfer of \$40 million generated from the surcharges assessed pursuant to §23-2C-
125 3(f)(1)(B) of this code and §23-2C-3(f)(2) of this code to the Bureau of Employment Programs'
126 Commissioner for deposit with the Secretary of the Treasury of the United States as a credit of
127 this state in the Unemployment Trust Fund Account maintained pursuant to §21A-8-4 of this code.

128 (g) The new premiums surcharge imposed by §23-2C-3(f)(3)(A) and §23-2C-3(f)(3)(B) of
129 this code sunset and are not collectible with respect to workers' compensation insurance
130 premiums paid when the policy is renewed on or after the first day of the month following the
131 month in which the Governor certifies to the Legislature that the revenue bonds issued pursuant
132 to §23-2D-1 *et seq.* of this code have been retired and that the unfunded liability of the Old Fund
133 has been paid or has been provided for in its entirety, whichever occurs last.

NOTE: The purpose of this bill is to terminate the Workers' Compensation Debt Reduction Fund assessment on self-insured employers after June 30, 2018.

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