

H. B. 4636

This bill amends several sections of Chapter 23 with regard to workers' compensation as follows:

Code § 5A-3-10a

- Prohibits the awarding of contracts to certain vendors who owe a debt to the State of West Virginia or its political subdivisions;
- Employer default is defined under this section as having an outstanding balance or liability to the Old Fund or the Uninsured Employers Fund, being in policy default, having failed to maintain mandatory workers' compensation coverage or having failed to meet self-insured obligations;
- No contract or renewal may be awarded to a debtor who is in "employer default".

Code § 23-1-20

- Creates an employment preference for employees in the workers' compensation litigation unit of the Attorney General's office who are laid-off as a result of decreased work from the Workers' Compensation Old Fund.

Code § 23-2-9A

- Creates sanctions for self-insured employers who default in the payment of any portions of surcharges or assessments;
- Such employers are ineligible for government contracts and may be subject to license or permit revocation;
- Insurance Commissioner to propose rules to establish penalties for non-payment of such obligations.

Code § 23-2C-3

- Sets the administrative surcharge collected by the Insurance Commission at 5½% of the premium collected plus the total of premium discounts for deductibles;
- The surcharge percentage shall be reviewed and any new percentage determined on or before June 30, 2013;
- The deficit reduction surcharge collected from private carriers, will be set at 9% effective July 1, 2008.

Code § 23-2C-15

- Permits private carriers to refuse to renew a policy with sixty days of advance notice;
- The carrier may also cancel a policy with ten days advance notice for the insured's failure to comply with a premium audit;
- Carriers are required to advise the Insurance Commissioner of coverage within thirty days of notice of the employer's operations in West Virginia;
- Carrier must also notify the Insurance Commission of the refusal to renew or cancellation of a policy, ten days prior to the effective date of termination;
- Carrier must also advise the Insurance Commission of a termination coverage by an employer within ten days of receipt of the employer's request for termination;
- A transfer of policy holders between carriers within the same group is not considered a cancellation or refusal to renew.

Code § 23-2C-17

- Requires licensing of third party administrators;
- The Insurance Commissioner will propose rules to regulate the use of third party administrators by private carriers and self-insured employers.

Code § 23-4-7b

- Provides that the Insurance Commissioner shall propose rules establishing criteria to give employers the option of allowing employees to return to work on a trial basis;
- Such rules may also provide for the suspension of temporary total disability benefits during a period of trial return to work.

Code § 23-5-1

- Provides for a sixty-day protest period;
- Provides that the parties to the claim shall be the claimant, the claimant's dependents, the employer, and the Insurance Commissioner with respect to those claims involving funds created in Article 2C;
- In claims where the employer had coverage on the date of injury or last exposure, the carrier has the sole authority to act on the employer's behalf in all matters related to the litigation of the claim;
- Provides that an employer may protest decisions incorporating findings made by the Occupational Pneumoconiosis Board, and orders entered pursuant to Code § 23-4-7a;
- When the only issue in litigation regarding compensability is whether the application was properly filed as a new claim or a reopening, the party that denies the application will be required to make conditional payment of benefits while the litigation proceeds;

- Provides that appropriate parties may be joined to the proceeding to determine who is chargeable for the claim;
- Provides that any protest filed to an order which is later corrected, will remain in place until dismissed by the Office of Judges.

Code § 23-5-11

- Provides that the Governor shall set the salary of the members of the Board of Review after July 1, 2008 subject to a cap of \$110,000 per year.

H.B. 4381

Provides for adverse risk assignments for certain employers unable to obtain coverage in the voluntary insurance market. Permits the Insurance Commissioner to designate any third party with substantial experience in developing and administering similar programs, to develop and administer the assigned risk program in West Virginia, for a period of three years. Thereafter, the Insurance Commissioner will contract with any qualified party to continue the administration of the plan. Also requires that the plan will require all private carriers writing workers' compensation coverage in West Virginia participate in adverse risk assignments as a condition of their authority to transact business.

Also added a workers' compensation insurance account to the West Virginia Guarantee Association for the purpose of paying unpaid claims on behalf of insurers who become insolvent after writing coverage for workers' compensation insurance in West Virginia.

S. B. 571

Creates a rebuttal presumption in favor of professional firefighters who develop certain cardiovascular or pulmonary diseases after having participated in firefighting or a training drill that involves firefighting. In order for the presumption to apply, the injured person must have been actively employed as a professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or pulmonary disease. The disease or injury must also have had its onset within six months from the date the firefighter participated in firefighting or a training drill.

Also requires the Insurance Commissioner to study the effects of the presumption created for professional firefighters and the probable effects of extending the presumption to volunteer firefighters. The Commissioner is required to report to the Joint Committee on Government and Finance no later than December 1, 2008.