

**TITLE 85  
EXEMPT LEGISLATIVE RULE  
WORKERS' COMPENSATION COMMISSION**

**SERIES 6  
WORKERS' COMPENSATION  
DEBT REDUCTION FUND ASSESSMENTS AND  
REGULATORY SURCHARGES**

**§85-6-1. General.**

1.1. Scope. -- This exempt legislative rule provides for the establishment and collection of statutory percentage surcharges to be remitted to the Insurance Commissioner for deposit in the Workers' Compensation Debt Reduction Fund created in W. Va. Code §23-2D-5 and for statutory percentage surcharges to be remitted to the Insurance Commissioner for the regulatory costs associated with regulating West Virginia's workers' compensation market.

1.2. Authority. -- W. Va. Code §§23-2C-3(f)(1) through (3); 23-2C-5(c)(2); 23-2C-22; 23-2D-5; 23-2D-6; 33-2-10(b); and 33-2-21(a). Pursuant to W. Va. Code §§23-2C-5(c)(2) and 33-2-10(b), workers' compensation rules proposed by the Insurance Commissioner and approved by the Industrial Council are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. -- July 18, 2008.

1.4. Effective Date. -- August 17, 2008.

**§85-6-2. Purpose of Rule.**

This rule provides for the implementation of the following:

2.1. Pursuant to W. Va. Code §23-2C-3(f)(3), a premiums surcharge on private carrier workers' compensation policy holders for deposit into the "West Virginia Workers' Compensation Debt Reduction Fund;"

2.2. Pursuant to W. Va. Code §23-2C-3(f)(3) an assessment on the self-insured employer community for deposit into the "West Virginia Workers' Compensation Debt Reduction Fund;"

2.3. Pursuant to W. Va. Code §23-2C-3(f)(1), a percentage surcharge on private carrier workers' compensation policy holders to pay for the costs attributable to the regulation of the workers' compensation insurance market; and

2.4. Pursuant to W. Va. Code §23-2C-3(f)(2), a percentage surcharge on self-insured employers to be remitted to the Insurance Commissioner to pay for the costs attributable to the regulation of the self-insured employer market.

### **§85-6-3. Definitions.**

As used in this rule, the following terms, words, and phrases have the meanings stated unless in any instance where such term, word or phrase is employed and the context expressly indicates that another meaning is intended.

3.1. “Industrial Council” means the Industrial Council created pursuant to W. Va. Code §23-2C-5.

3.2. “Code of West Virginia” and “West Virginia Code” mean the West Virginia Code of 1931, as amended.

3.3. “Insurance Commissioner” means the Insurance Commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

3.4. “Payment interval” means each periodic payment of the employer’s workers’ compensation coverage obligation to the private carrier as established by the workers’ compensation policy.

3.5. “Payroll” means the term as defined in the most current approved filing of the Insurance Commissioner’s designated rating organization for workers’ compensation.

3.6. “Private carrier” means any insurer authorized by the Insurance Commissioner to provide workers’ compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code.

3.7. “Private carrier regulatory surcharge” is the surcharge described in subsection 2.3. of this rule.

3.8. “Self-insured employer regulatory surcharge” is the surcharge described in subsection 2.4. of this rule.

3.9. “Self-insurer” and “self-insured employer” mean an employer who is eligible and have been granted self-insured status under the provisions of W. Va. Code §23-2-9.

3.10. “Total Assessable Workers’ Compensation Premium Due” means the premium payable at each payment interval to a private carrier by an employer for its West Virginia workers’ compensation coverage under chapter twenty-three of the West Virginia Code, including, but not limited to, the base rate premium as adjusted by any experience modification factor. “Total assessable workers’ compensation premium due” shall also be computed prior to the application of all discounts based on deductible provisions in policies. The Insurance Commissioner has discretion to determine which premiums constitute premiums for West

Virginia workers' compensation coverage and which premiums constitute other insurance coverage subject to premium taxes and surcharges under chapter thirty-three of the West Virginia Code: *Provided*, That under no circumstances may any premiums be subject to both the surcharges under chapter twenty-three of the West Virginia Code and this rule and taxes and surcharges under thirty-three of the West Virginia Code. Premiums payable for insurance coverage necessitated by federal law, including, but not limited to, Federal Black Lung and USL&H coverage, and for any type of employer's liability coverage, including, but not limited to, coverage for liability arising under W. Va. Code § 23-4-2(d)(2) are not included in the "total assessable workers' compensation premium." *Provided, further*, That, with the exception of premiums for coverage necessitated by federal law, premiums for standard limits of employer's liability coverage included in a workers' compensation policy are included in "total assessable workers' compensation premium due."

3.11. "WCDRF premiums surcharge" is the surcharge described in subsection 2.1. of this rule.

3.12. "WCDRF self-insured employer surcharge" is the surcharge described in subsection 2.2. of this rule.

#### **§85-6-4. Surcharges on Private Carrier Premiums.**

4.1. The Insurance Commissioner shall assess private carriers the following statutory percentage surcharges:

- a. The private carrier regulatory surcharge; and
- b. The WCDRF premiums surcharge.

Beginning on July 1, 2008, the private carrier regulatory surcharge shall be 5.5% and the WCDRF premiums surcharge shall be 9%. The Insurance Commissioner may annually change the percentage of the private carrier regulatory surcharge as the Commissioner deems necessary beginning on July 1, 2013: *Provided*, That the Commissioner shall provide private carriers at least ninety (90) days notice prior to changing the private carrier regulatory surcharge percentage. The private carrier shall collect and remit the surcharges to the Insurance Commissioner. Any change to the percentage may be implemented by private carriers only in policies issued or renewed on or after the effective date of the change.

4.2. The surcharges described in this section are also applicable to all uninsured employers [W. Va. Code §23-2C-8], to the extent that the Insurance Commissioner is able to collect the same, and to all employers assigned to the adverse risk fund [W. Va. Code §23-2C-10].

4.3. The obligation of the private carrier is to collect and remit the surcharges described in this section, as set by the Insurance Commissioner, from the total assessable workers' compensation premium due and received by the private carrier. The private carrier has no obligation to the Insurance Commissioner or to the Workers' Compensation Debt Reduction

Fund to make up for surcharge amounts not collected as a result of the insured's failure to pay their premium.

4.4. Failure by an insured to pay the percentage surcharge as invoiced by their private carrier on the premium invoice is grounds for cancellation of the workers' compensation policy for failure to pay premium.

#### **§85-6-5. Surcharges on the Self-insured Employer Community.**

5.1. The Insurance Commissioner shall assess self-insured employers the following statutory percentage surcharges:

- a. The self-insured employer regulatory surcharge; and
- b. The WCDRF self-insured employer surcharge.

The percentage surcharges apply to the payroll of each self-insured employer. Each self-insured employer shall remit the surcharges to the Insurance Commissioner on a quarterly basis. The surcharge percentage set by the Insurance Commissioner shall be effective July 1 of that year. The Insurance Commissioner may change the percentage annually, as needed to meet the annual funding requirements as set forth in W. Va. Code §23-2C-3(f). The Insurance Commissioner shall provide at least ninety (90) days notice to self-insured employers prior to changing the percentage amounts.

5.2. If the annual statutory amount collected for the Insurance Commissioner under the surcharges described in this section exceeds or is less than the annual statutory funding requirements, the excess or shortage shall be applied in the determination of the percentage for the next year, so that the running average collected for the Insurance Commissioner is consistent with the aggregate monetary amount required to be collected under the statute.

#### **§85-6-6. Surcharge and Assessment Methodology for Collections of Surcharges Made Pursuant to W. Va. Code §23-2C-3(f)(3).**

6.1. The surcharges imposed by section four of this rule shall be reflected on each premium invoice issued by a private carrier, regardless of the payment interval. The surcharge percentage shall be applied against the total assessable workers' compensation premium due.

6.2. The surcharges shall be remitted by the private carrier no later than the twenty-fifth day of the month succeeding the end of the calendar quarter in which they are collected, except if the surcharges are collected in the fourth quarter, the surcharges shall be remitted no later than the first day of March the succeeding year.

6.3. Each self-insured employer, group self-insurer, or insurance carrier shall provide any information and submit any reports the Insurance Commissioner may require to effectuate the provisions of this rule.