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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1993

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## ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 2

(By Senator *Sourdette, Mr. President,*  
*and Bolay, By Request of the Executive)*

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PASSED May 24, 1993  
In Effect from Passage

**E N R O L L E D**  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 2**

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,  
BY REQUEST OF THE EXECUTIVE)

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[Passed May 26, 1993; in effect from passage.]

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AN ACT to repeal sections five, six and eight, article four-b, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections nine, ten and twelve, article four-c of said chapter; to repeal sections twenty-two, twenty-three and twenty-four, article thirteen-a, chapter eleven of said code; to repeal section eighteen, article twenty-six of said chapter; to amend and reenact section thirteen, article fifteen, chapter seven of said code; to amend article two, chapter nine of said code by adding thereto three new sections, designated sections nine, ten and eleven; to amend and reenact sections two and three, article four-a of said chapter; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact sections one, two and four, article four-b of said chapter; to amend and reenact sections one, two, five and seven, article four-c of said chapter; to amend and reenact section eleven, article five of said chapter; to further

amend said article by adding thereto three new sections, designated sections eleven-a, eleven-b and seventeen; to amend and reenact section eighteen-a, article ten, chapter eleven of said code; to further amend said article by adding thereto a new section, designated section eighteen-b; to amend and reenact sections three and six, article twelve-b of said chapter; to amend and reenact sections one, two, three, seven, eight, nine, ten, nineteen and twenty, article thirteen-a of said chapter; to further amend said article by adding thereto six new sections, designated sections three-a, three-b, three-c, nine-a, twenty-a and twenty-five; to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty; to further amend said chapter by adding thereto a new article, designated article twenty-seven; to amend article six, chapter twelve of said code by adding thereto a new section, designated section nine-e; to amend and reenact section fifteen-a, article one, chapter sixteen of said code; and to amend and reenact section five, article two-d of said chapter, all relating generally to this state's medicaid program and taxes funding that program; repealing the physician provider medicaid enhancement fund; repealing physician providers' hold harmless provision; repealing abrogation provisions of physician provider medicaid act; repealing other provider medicaid enhancement funds; repealing other providers' hold harmless provision; repealing abrogation provisions of health care provider medicaid act; repealing provisions of severance tax relating to credit for coking facilities, credit for payment of consumers sales and use taxes, rules for filing returns and paying tax and obsolete requirement to file information returns; repealing abrogation rules of the medicaid enhancement tax; requiring county ambulance authorities to pay privilege tax on emergency ambulance services; requiring development of medicaid monitoring and case management systems and implementation of other reforms; limiting use of funds for abortion; requiring providers to collect copayments and providing for reports and civil penalties; eliminating requirement for pro rata reimbursement from medicaid uncompensated care fund; creating

a medical services trust fund; identifying source of funds and permitted expenditures with respect to said fund; changing criteria for disproportionate share hospitals; requiring department of health and human resources to file state medicaid plan amendment; defining terms used in physician/medical practitioner provider medicaid act; amending powers and duties of physician/medical practitioner provider board; defining terms used in health care provider medicaid act; changing composition of general provider medicaid enhancement board; replacing outpatient hospital provider medicaid enhancement board with the facility providers' medicaid enhancement board; amending powers and duties of certain boards; requiring that department of health and human resources be fully subrogated to the rights of recipients of medical assistance; clarifying rules as to effect of subrogation; providing for notice of actions or claims by medical assistance recipients or the department of health and human resources; providing for release of information related to right of subrogation and requiring insurance commissioner to establish guidelines therefor; requiring nonprofit organizations receiving medicaid reimbursement payments to provide annual accounting of receipts and disbursements; limiting application of current addition to tax for failure to pay estimated tax to the income and business franchise taxes and conforming annualization of income rules for individuals to federal law; imposing a new addition to tax for failure to make required installment payments of other taxes; making technical corrections in the imposition of minimum severance tax; requiring monthly remittance of estimated minimum severance tax; changing name of the "Severance Tax Act" to the "Severance and Business Privilege Tax Act of 1993"; defining terms; extending tax to providers of certain health care services; moving tax on privilege of severing natural gas or oil into a new section; moving tax on privilege of severing timber into a new section; moving tax on privilege of severing certain other natural resources into a new section; providing for accounting periods and methods of accounting, filing of annual returns and other docu-

ments, and rules for payment of taxes in periodic installment payments; specifying time for paying tax; providing for allowance of annual tax credit; providing rules on extensions of time for filing returns and other documents or paying tax; providing for administration, collection and enforcement of tax and application of criminal penalties; specifying effective dates; dedicating tax collected from health care providers to the medicaid program and requiring deposit of such tax into a special revenue fund created in state treasurer's office; requiring tax commissioner to account separately for amount of tax collected from each class of health care provider; providing transition rules for termination of medicaid enhancement tax; requiring providers to pay tax on estimated medicaid reimbursement payments for services rendered before the first day of June, one thousand nine hundred ninety-three, regardless of whether payment for such services is received prior to that date; imposing civil penalty on health care providers who owe delinquent medicaid enhancement tax after specified date; creating the "West Virginia Health Care Provider Tax Act of 1993"; making legislative findings; providing short title and rules regarding arrangement and classification; defining terms; imposing broad-based health care related taxes on specified providers of health care items or services, at various rates of tax, based on the respective classifications of such providers; specifying the measure of tax for each classification; permitting temporary increase in rates of providers of inpatient hospital services effective upon filing of claim for temporary relief with health care cost review authority and providing requirements and procedures; permitting hospitals which provide nursing facility services to adjust nursing facility rates to compensate for the tax without first obtaining approval from the health care cost review authority and providing limitations; prohibiting double taxation; providing for filing of returns and other documents and payment of estimated tax in installment payments; specifying time and place for filing returns and paying tax; providing rules regarding extensions of time and the signing of returns and other documents; requiring taxpayers to keep

records adequate to verify their liability for tax; making administration, collection and enforcement of these taxes subject to the West Virginia tax procedure and administration act; making the West Virginia crimes and penalties act applicable to these taxes; dedicating taxes collected to funding of medicaid program; requiring taxes collected to be deposited into special revenue fund created in state treasurer's office; requiring tax commissioner to keep records which account separately for the amount of tax paid by each class of health care provider; allowing tax commissioner certain costs of administration and collection; providing rules for abrogation and severability; specifying effective dates; specifying various effective dates throughout the bill; providing legislative findings regarding need for and source of loan from consolidated fund for medicaid; authorizing loan from consolidated fund for prompt medicaid payments; establishing rate of interest on said loan; requiring the repayment of loan from collections of tax on state share of medicaid reimbursements and any civil penalties collected for nonpayment of tax; creating a "Medicaid Prompt Payment Fund" and requiring the deposit of loan proceeds and repayments into said fund; requiring board of investments to manage said fund; requiring board of investments to transfer loan proceeds to medical services fund upon request of the governor; providing for transfers by intergovernmental transfer from hospital services revenue account to medical services trust fund; and permitting approval by health care cost review authority of up to sixty beds for a demonstration project providing nursing services to patients with alzheimer's disease and providing requirements and limitations.

*Be it enacted by the Legislature of West Virginia:*

That sections five, six and eight, article four-b, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine, ten and twelve, article four-c of said chapter be repealed; that sections twenty-two, twenty-three and twenty-four, article thirteen-a, chapter eleven of said code be repealed; that section eighteen, article twenty-six of said

chapter be repealed; that section thirteen, article fifteen, chapter seven of said code be amended and reenacted; that article two, chapter nine of said code be amended by adding thereto three new sections, designated sections nine, ten and eleven; that sections two and three, article four-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section two-a; that sections one, two and four, article four-b of said chapter be amended and reenacted; that sections one, two, five and seven, article four-c of said chapter be amended and reenacted; that section eleven, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections eleven-a, eleven-b and seventeen; that section eighteen-a, article ten, chapter eleven of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eighteen-b; that sections three and six, article twelve-b of said chapter be amended and reenacted; that sections one, two, three, seven, eight, nine, ten, nineteen and twenty, article thirteen-a of said chapter be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections three-a, three-b, three-c, nine-a, twenty-a and twenty-five; that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty; that said chapter be further amended by adding thereto a new article, designated article twenty-seven; that article six, chapter twelve of said code be amended by adding thereto a new section, designated section nine-e; that section fifteen-a, article one, chapter sixteen of said code be amended and reenacted; and that section five, article two-d of said chapter be amended and reenacted, all to read as follows:

**CHAPTER 7. TRAINING PROGRAMS FOR  
COUNTY EMPLOYEES, ETC.; COMPENSATION OF  
ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS,  
DEPUTIES AND EMPLOYEES, THEIR NUMBER  
AND COMPENSATION.**

**ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.**

**§7-15-13. Exemption from taxation.**

1 It is hereby found, determined and declared that the  
2 creation of any authority and the carrying out of its  
3 purposes is in all respects for the benefit of the people  
4 of this state in general and of the participating  
5 governments in particular and is a public purpose; and  
6 that the authority will be performing an essential  
7 governmental function in the exercise of the powers  
8 conferred upon it by the provisions of this article.  
9 Accordingly, each authority and, without limitation, its  
10 revenues, properties, operations and activities shall be  
11 exempt from the payment of any taxes or fees to the  
12 state or any of its political subdivisions: *Provided*, That  
13 this exemption shall not apply to the tax imposed by  
14 section seven, article twenty-seven, chapter eleven of  
15 this code on gross receipts derived from transporting  
16 patients. Interest on obligations and all evidences of  
17 indebtedness of any such authority shall be exempt  
18 from taxation, except inheritance and transfer taxes.

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SER- VICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.**

#### **§9-2-9. Secretary to develop medicaid monitoring and case management.**

1 (a) On or before the first day of January, one  
2 thousand nine hundred ninety-four, the secretary of  
3 the department of health and human resources shall:

4 (1) Develop a managed care system to monitor the  
5 services provided by the medicaid program to individ-  
6 ual clients;

7 (2) Develop an independent referral service, includ-  
8 ing the review of individual cases for abuses of the  
9 program; and

10 (3) Develop a schedule for implementation of the  
11 managed care and independent referral system. The  
12 managed care system shall focus on, but not be limited  
13 to, the behavioral health and mental health services.



- 14 (b) In addition thereto, and in accordance with  
15 applicable federal medicaid laws, the secretary shall  
16 prepare recommendations, to be submitted to the joint  
17 committee on government and finance on or before  
18 the first day of January, one thousand nine hundred  
19 ninety-four. In developing recommendations the  
20 secretary shall consider as options the following:
- 21 (1) Review of medicaid services which are optional  
22 under federal medicaid law and identification of  
23 services to be retained, reduced or eliminated;
- 24 (2) The elimination, reduction or phase-out of: (i)  
25 Services which are not generally available to West  
26 Virginia citizens not covered under the state's medic-  
27 aid program; or (ii) services which are not generally  
28 covered under group policies of insurance made  
29 available to employees of employers within the state;
- 30 (3) The elimination or reduction of services, or  
31 reduction of provider reimbursement rates, for identi-  
32 fied services of marginal utility;
- 33 (4) Higher reimbursement rates for primary and  
34 preventive care;
- 35 (5) Changes in fee structure, which may include a  
36 system of prospective payments, and may include  
37 establishment of global fees for identified services or  
38 diagnoses including maternity care;
- 39 (6) Utilization caps for certain health care procedures;
- 40 (7) Restriction of coverage for cosmetic procedures;
- 41 (8) Identification of excessive use of certain health  
42 care procedures by individuals and a policy to restrict  
43 excessive use;
- 44 (9) Identification of services which reduce the need  
45 for more costly options for necessary care and reten-  
46 tion or expansion of those programs;
- 47 (10) Identification of services for which preauthori-  
48 zation should be requirement for medicaid  
49 reimbursement;
- 50 (11) Recommendations relating to the development

51 of a demonstration project on long-term care, which  
52 demonstration project may be limited to patients with  
53 alzheimer's disease;

54 (12) A policy concerning the department's proce-  
55 dures for compliance, monitoring and inspection; and

56 (13) Such other options as may be developed.

57 (c) The secretary shall utilize in-state health care  
58 facilities for inpatient treatment when such facilities  
59 are available. Prior authorization, consistent with  
60 applicable federal law, shall be required for out-of-  
61 state inpatient treatment.

62 (d) The secretary shall report to the joint committee  
63 on government and finance on the development and  
64 implementation of medicaid programs that provide  
65 incentives to working persons. The secretary shall  
66 consider: Subsidies for low income working persons;  
67 individual or small employer buy-ins to the state  
68 medicaid fund; prospective payment systems for  
69 primary care physicians in underserved areas; and a  
70 system to improve monitoring of collections, expendi-  
71 tures, service delivery and utilization.

72 (e) The secretary shall report quarterly to the joint  
73 committee on government and finance regarding  
74 provider and facility compliance with federal and state  
75 medicaid laws, including, but not limited to, the  
76 following: The number of inspections conducted  
77 during the previous quarter; description of programs,  
78 services and facilities reviewed; findings; and recom-  
79 mendations for corrections.

**§9-2-10. Collection of copayments by health care providers;  
penalties.**

1 (a) The secretary is directed to institute a program  
2 by the first day of January, one thousand nine hun-  
3 dred ninety-four, which requires the payment and  
4 collection of copayments. Such program shall conform  
5 with Section 447.53, Chapter 42 of the Code of Federal  
6 Regulations, and the amount of such copayments shall  
7 be determined in accordance with the provisions of  
8 Sections 447.54 and 447.55, Chapter 42, of the Code of

9 Federal Regulations. The secretary shall complete all  
10 federal requirements necessary to implement this  
11 section, including the submission of any amendment to  
12 the state medicaid plan, immediately following the  
13 effective date of this section.

14 (b) Any individual or entity receiving reimburse-  
15 ment from this state under the medical assistance  
16 program of the Social Security Act is required to  
17 collect such copayments: *Provided*, That in accordance  
18 with Section 447.15, Chapter 42 of the Code of Federal  
19 Regulations, no such individual or entity shall refuse  
20 care or services to any medicaid-eligible individual  
21 because that individual is unable to pay such copay-  
22 ment. The amount of copayments collected shall be  
23 reported to the secretary.

24 (c) After the first day of February, one thousand  
25 nine hundred ninety-four, any person, firm, corpora-  
26 tion or other entity who willfully, by means of a false  
27 statement or representation, or by concealment of any  
28 material fact, or by other fraudulent scheme, device or  
29 artifice on behalf of himself, itself or others, fails to  
30 attempt to collect copayments as required by this  
31 section, shall be liable for payment to the department  
32 of health and human resources of a civil money  
33 penalty in the amount of one hundred dollars for each  
34 occurrence of willful failure to collect a required  
35 copayment.

36 (d) If it comes to the attention of the secretary that  
37 a person or other entity is failing to attempt to collect  
38 copayments as mandated, the matter shall be referred  
39 to the medicaid fraud control unit for investigation  
40 and referral for prosecution pursuant to the provisions  
41 of article seven of this chapter.

**§9-2-11. Limitation on use of funds.**

1 (a) No funds from the medicaid program accounts  
2 may be used to pay for the performance of an abortion  
3 by surgical or chemical means unless:

4 (1) On the basis of the physician's best clinical  
5 judgment, there is:

6 (i) A medical emergency that so complicates a  
7 pregnancy as to necessitate an immediate abortion to  
8 avert the death of the mother or for which a delay will  
9 create grave peril of irreversible loss of major bodily  
10 function or an equivalent injury to the mother:  
11 *Provided*, That an independent physician concurs with  
12 the physician's clinical judgment; or

13 (ii) Clear clinical medical evidence that the fetus has  
14 severe congenital defects or terminal disease or is not  
15 expected to be delivered; or

16 (2) The individual is a victim of incest or the  
17 individual is a victim of rape when the rape is  
18 reported to a law-enforcement agency.

19 (b) The Legislature intends that the state's medicaid  
20 program not provide coverage for abortion on demand  
21 and that abortion services be provided only as express-  
22 ly provided for in this section.

**ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.**

**§9-4A-2. Creation of medicaid uncompensated care fund.**

1 (a) There is hereby created in the state treasury a  
2 special revolving fund known as the medicaid uncom-  
3 pensated care fund. All moneys deposited or accrued  
4 in this fund shall be used exclusively:

5 (1) To provide the state's share of the federal  
6 medicaid program funds in order to improve inpatient  
7 payments to disproportionate share hospitals; and

8 (2) To cover administrative cost incurred by the  
9 department of health and human resources and  
10 associated with the medicaid program and this fund:  
11 *Provided*, That no expenditures may be made to cover  
12 said administrative costs for any fiscal year after one  
13 thousand nine hundred ninety-two, except as approp-  
14 priated by the Legislature.

15 (b) Moneys from the following sources may be  
16 placed into the fund:

17 (1) All public funds transferred by any public agency  
18 to the department of health and human resources

19 medicaid program for deposit in the fund as contem-  
20 plated or permitted by applicable federal medicaid  
21 laws;

22 (2) All private funds contributed, donated or  
23 bequeathed by corporations, individuals or other  
24 entities to the fund as contemplated and permitted by  
25 applicable federal medicaid laws;

26 (3) Interest which accrued on amounts in the fund  
27 from sources identified in subdivisions (1) and (2) of  
28 this subsection; and

29 (4) Federal financial participation matching the  
30 amounts referred to in subdivisions (1), (2) and (3) of  
31 this subsection, in accordance with Section 1902 (a) (2)  
32 of the Social Security Act.

33 (c) Any balance remaining in the medicaid uncom-  
34 pensated care fund at the end of any state fiscal year  
35 shall not revert to the state treasury but shall remain  
36 in this fund and shall be used only in a manner  
37 consistent with this article.

38 (d) Moneys received into the fund shall not be  
39 counted or credited as part of the legislative general  
40 appropriation to the state medicaid program.

41 (e) The fund shall be administered by the depart-  
42 ment of health and human resources. Moneys shall be  
43 disbursed from the fund on a quarterly basis. The  
44 secretary of the department shall implement the  
45 provisions of this article prior to the receipt of any  
46 transfer, contribution, donation or bequest from any  
47 public or private source.

48 (f) All moneys expended from the fund after receipt  
49 of federal financial participation shall be allocated to  
50 reimbursement of inpatient charges and fees of eligi-  
51 ble disproportionate share hospitals. Except for the  
52 payment of administrative costs as provided for in this  
53 section, appropriation from this fund for any other  
54 purposes is void.

**§9-4A-2a. Medical services trust fund.**

1 (a) The Legislature finds and declares that certain

2 dedicated revenues should be preserved in trust for  
3 the purpose of stabilizing the state's medicaid program  
4 and providing services for future federally mandated  
5 population groups in conjunction with federal reform.

6 (b) There is hereby created a special account within  
7 the department of health and human resources, which  
8 shall be an interest-bearing account and may be  
9 invested in the manner permitted by section nine,  
10 article six, chapter twelve of this code, designated the  
11 medical services trust fund. Funds paid into the  
12 account shall be derived from the following sources:

13 (1) Transfers, by intergovernmental transfer, from  
14 the hospital services revenue account provided for in  
15 section fifteen-a, article one, chapter sixteen of this  
16 code;

17 (2) All interest or return on investment accruing to  
18 the fund;

19 (3) Any gifts, grants, bequests, transfers or donations  
20 which may be received from any governmental entity  
21 or unit or any person, firm, foundation or corporation;  
22 and

23 (4) Any appropriations by the Legislature which  
24 may be made for this purpose.

25 (c) Expenditures from the fund are limited to the  
26 following:

27 (1) Payment of backlogged billings from providers of  
28 medicaid services when cash-flow problems within the  
29 medical services fund do not permit payment of  
30 providers within federally required time limits; and

31 (2) Funding for services to future federally mandat-  
32 ed population groups in conjunction with federal  
33 health care reform: *Provided*, That other medicaid  
34 funds have been exhausted for the federally mandated  
35 expansion: *Provided, however*, That new optional  
36 services for which a state medicaid plan amendment is  
37 submitted after the first day of May, one thousand  
38 nine hundred ninety-three, which are not cost effec-  
39 tive for the state, are eliminated prior to expenditure

40 of any moneys from this fund for medicaid expansion.

41 (d) Expenditures from the fund solely for the  
42 purposes set forth in subsection (c) of this section shall  
43 be authorized in writing by the governor, who shall  
44 determine in his or her discretion whether any  
45 expenditure shall be made, based on the best interests  
46 of the state as a whole and its citizens, and shall  
47 designate the purpose of the expenditure. Upon  
48 authorization signed by the governor, funds may be  
49 transferred to the medical services fund: *Provided*,  
50 That all expenditures from the medical services trust  
51 fund shall be reported forthwith to the joint commit-  
52 tee on government and finance.

53 (e) Notwithstanding the provision of section two,  
54 article two, chapter twelve of this code, moneys within  
55 the medical services trust fund may not be redesignat-  
56 ed for any purpose other than those set forth in  
57 subsection (c) of this section, except that, upon elimi-  
58 nation of the medicaid program in conjunction with  
59 federal health care reform, moneys within the fund  
60 may be redesignated for the purpose of providing  
61 health care coverage or services in coordination with  
62 federal reform.

**§9-4A-3. Disproportionate share hospitals.**

1 (a) Unless otherwise noted, all disproportionate  
2 share hospitals must meet the following criteria in  
3 order to be eligible for reimbursement from the  
4 medicaid uncompensated care fund:

5 (1) The hospital must be licensed by the department  
6 of health and human resources and participate in the  
7 medicaid program; and

8 (2) The hospital must have at least two obstetricians  
9 with staff privileges at the hospital who have agreed to  
10 provide obstetric services to individuals entitled to  
11 such services by the approved state medicaid plan. In  
12 the case of a hospital located in a rural area, the term  
13 "obstetrician" includes any physician with staff  
14 privileges at the hospital who performs nonemergency  
15 obstetric procedures. The requirements of this subsec-

16 tion do not apply to hospitals who did not offer routine  
17 obstetrical services to the general public as of the  
18 twenty-first day of December, one thousand nine  
19 hundred eighty-seven. Notwithstanding the provisions  
20 of this section, should federal requirements outlined in  
21 this subsection change, the department is to comply  
22 with federal law.

23 (b) Additionally, all disproportionate share hospitals  
24 must meet one of the following criteria:

25 (1) The hospital provided in excess of three thousand  
26 medicaid inpatient days of service during the most  
27 recent fiscal year of the hospital;

28 (2) For the same time period, the sum of the  
29 following factors must exceed eight percent:

30 (i) Total medicaid inpatient days divided by total  
31 inpatient days; and

32 (ii) Total medicare supplemental security insurance  
33 inpatient days divided by total medicare inpatient  
34 days; and

35 (iii) Total days of care provided to eligible medicaid  
36 patients whose care was not paid by West Virginia  
37 medicaid divided by total inpatient medicaid days; or

38 (3) The hospital is a psychiatric, rehabilitation or  
39 acute care hospital owned and operated by the state of  
40 West Virginia, which hospital shall be exempt from  
41 the requirements of subdivision (1), subsection (a) of  
42 this section.

43 (c) The dollar value of contributions, bequests or  
44 donations made by any hospital to the fund shall not  
45 be included as a reimbursable cost in the medicaid cost  
46 report of that hospital.

47 (d) Immediately following the effective date of this  
48 section, and in no event later than the thirtieth day of  
49 June, one thousand nine hundred ninety-three, the  
50 department of health and human resources shall  
51 submit to the federal health care finance administra-  
52 tion a state medicaid plan amendment in order to  
53 effectuate the purposes of subdivision (3), subsection



54 (b) of this section.

**ARTICLE 4B. PHYSICIAN/MEDICAL PRACTITIONER PROVIDER  
MEDICAID ACT.**

**§9-4B-1. Definitions.**

1 The following words when used in this article have  
2 meanings ascribed to them in this section, except in  
3 those instances where the context clearly indicates a  
4 different meaning:

5 (a) "Board" means the physician/medical practitio-  
6 ner provider medicaid enhancement board created to  
7 develop, review and recommend the physician/medi-  
8 cal practitioner provider fee schedule.

9 (b) "Physician provider" means an allopathic or  
10 osteopathic physician, rendering services within this  
11 state and receiving reimbursement, directly as an  
12 individual provider or indirectly as an employee or  
13 agent of a medical clinic, partnership or other business  
14 entity.

15 (c) "Nurse practitioner" means a registered nurse  
16 qualified by virtue of his or her education and creden-  
17 tials and approved by the West Virginia board of  
18 examiners for registered professional nurses to prac-  
19 tice as an advanced practice nurse independently or in  
20 a collaborative relationship with a physician.

21 (d) "Nurse-midwife" means a qualified professional  
22 nurse registered with the West Virginia board of  
23 examiners for registered professional nurses who by  
24 virtue of additional training is specifically qualified to  
25 practice nurse-midwifery according to the statement  
26 of standards for the practice of nurse-midwifery as set  
27 forth by the American college of nurse-midwives.

28 (e) "Physician assistant" means an assistant to a  
29 physician who is a graduate of an approved program  
30 of instruction in primary health care or surgery, has  
31 attained a baccalaureate or master's degree, has passed  
32 the national certification examination and is qualified  
33 to perform direct patient care services under the  
34 supervision of a physician.

35 (f) "Secretary" means the secretary of the depart-  
36 ment of health and human resources.

37 (g) "Single state agency" means the single state  
38 agency for medicaid in this state.

**§9-4B-2. Physician/medical practitioner provider medicaid  
enhancement board; creation and  
composition.**

1 There is hereby created the West Virginia physi-  
2 cian/medical practitioner provider medicaid enhance-  
3 ment board to consist of eleven members. The board  
4 shall consist of ten members, appointed by the gover-  
5 nor, and the secretary, or his or her designee, who  
6 shall serve as an ex officio, nonvoting member. The  
7 members appointed by the governor shall include five  
8 allopathic physicians, one osteopathic physician, one  
9 nurse practitioner, one nurse-midwife, one physician  
10 assistant and one lay person. The governor shall select  
11 four allopathic physician board members from a list of  
12 eight recommendations submitted to the governor by  
13 the state medical association, one allopathic physician  
14 board member from a list of three recommendations  
15 submitted to the governor by the state academy of  
16 family physicians, the osteopathic physician board  
17 member from three recommendations submitted to  
18 the governor by the state osteopathic society, the  
19 nurse practitioner from three recommendations sub-  
20 mitted to the governor by the advanced nursing  
21 practice conference group of the West Virginia nurses  
22 association, the nurse-midwife from three recommen-  
23 dations submitted to the governor by the the West  
24 Virginia chapter of the American college of nurse  
25 midwives, the physician assistant from three recom-  
26 mendations submitted to the governor by the state  
27 physician assistant association and the lay board  
28 member, at his or her discretion. The respective  
29 associations shall submit their recommendations to the  
30 governor within five days of the effective date of this  
31 article. The governor shall make all appointments  
32 within fifteen days from the receipt of all recommen-  
33 dations. After the initial appointment of the board, any  
34 appointment to fill a vacancy shall be for the unex-

35 pired term only, made in the same manner as the  
36 initial appointment, and the terms of all members  
37 expire on the first day of July, one thousand nine  
38 hundred ninety-four. The board shall select a member  
39 to act as chairperson. The chairperson shall be the  
40 chief administrative officer and shall preside over  
41 official transactions of the board.

**§9-4B-4. Powers and duties.**

1 (a) The board shall:

2 (1) Develop and recommend a reasonable physician/  
3 medical practitioner provider fee schedule that con-  
4 forms with federal medicaid laws and remains within  
5 the limits of annual funding available to the single  
6 state agency for the medicaid program. In developing  
7 the fee schedule, the board may refer to a nationally  
8 published regional specific fee schedule selected by the  
9 secretary of the department of health and human  
10 resources. The board may consider identified health  
11 care priorities in developing its fee schedule to the  
12 extent permitted by applicable federal medicaid laws  
13 and may recommend higher reimbursement rates for  
14 basic primary and preventive health care services  
15 than for other services. In identifying basic primary  
16 and preventive health care services and in accordance  
17 with applicable federal medicaid laws, the board may  
18 consider factors, including, but not limited to, services  
19 defined and prioritized by the basic services task force  
20 of the health care planning commission in its report  
21 issued in December of the year one thousand nine  
22 hundred ninety-two; and minimum benefits and  
23 coverages for policies of insurance as set forth in  
24 section fifteen, article fifteen, chapter thirty-three of  
25 this code and section four, article sixteen-c of said  
26 chapter and rules of the insurance commissioner  
27 promulgated thereunder. If the single state agency  
28 approves the fee schedule, it shall implement the  
29 physician/medical practitioner provider fee schedule;

30 (2) Review the fee schedule on a quarterly basis and  
31 recommend to the single state agency any adjustments  
32 it considers necessary. If the single state agency

33 approves any of the board's recommendations, it shall  
34 immediately implement those adjustments and shall  
35 report the same to the joint committee on government  
36 and finance on a quarterly basis;

37 (3) Meet and confer with representatives from each  
38 medical specialty area so that equity in reimburse-  
39 ment increases or decreases be achieved to the grea-  
40 test extent possible;

41 (4) Assist and enhance communications between  
42 participating physician and medical practitioner pro-  
43 viders and the department of health and human  
44 resources; and

45 (5) Review reimbursements in relation to those  
46 physician and medical practitioner providers who  
47 provide early and periodic screening diagnosis and  
48 treatment.

49 (b) The board may carry out any other powers and  
50 duties as prescribed for it by the secretary.

51 (c) Nothing in this section gives the board the  
52 authority to interfere with the discretion and judg-  
53 ment given to the single state agency that administers  
54 the state's medicaid program. If the single state agency  
55 disapproves the recommendations or adjustments to  
56 the fee schedule, it is expressly authorized to make  
57 any modifications to fee schedules as are necessary to  
58 ensure that total financial requirements of the agency  
59 for the current fiscal year with respect to the state's  
60 medicaid plan are met and shall report the same to the  
61 joint committee on government and finance on a  
62 quarterly basis. The purpose of the board is to assist  
63 and enhance the role of the single state agency in  
64 carrying out its mandate by acting as a means of  
65 communication between the medicaid provider com-  
66 munity and the agency.

67 (d) On a quarterly basis, the single state agency and  
68 the board shall report to the joint committee on  
69 government and finance the status of the fund, any  
70 adjustments to the fee schedule and the fee schedule  
71 for each health care provider group identified in

72 section one of this article.

**ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ACT.**

**§9-4C-1. Definitions.**

1 The following words when used in this article have  
2 the meanings ascribed to them in this section, except  
3 in those instances where the context clearly indicates  
4 a different meaning:

5 (a) "Ambulance service provider" means a person  
6 rendering ambulance services within this state and  
7 receiving reimbursement, directly as an individual  
8 provider or indirectly as an employee or agent of a  
9 medical clinic, partnership or other business entity.

10 (b) "General health care provider" means an audi-  
11 ologist, a behavioral health center, a chiropractor, a  
12 community care center, an independent laboratory, an  
13 independent X-ray service, an occupational therapist,  
14 an optician, an optometrist, a physical therapist, a  
15 podiatrist, a private duty nurse, a psychologist, a  
16 rehabilitative specialist, a respiratory therapist and a  
17 speech therapist rendering services within this state  
18 and receiving reimbursement, directly as an individu-  
19 al provider or indirectly as an employee or agent of a  
20 medical clinic, partnership or other business entity.

21 (c) "Inpatient hospital services provider" means a  
22 provider of inpatient hospital services for purposes of  
23 Section 1903(w) of the Social Security Act.

24 (d) "Intermediate care facility for the mentally  
25 retarded services provider" means a provider of  
26 intermediate care facility services for the mentally  
27 retarded for purposes of Section 1903(w) of the Social  
28 Security Act.

29 (e) "Nursing facility services provider" means a  
30 provider of nursing facility services for purposes of  
31 Section 1903(w) of the Social Security Act.

32 (f) "Outpatient hospital service provider" means a  
33 hospital providing preventative, diagnostic, therapeutic,  
34 rehabilitative or palliative services that are fur-  
35 nished to outpatients.

36 (g) "Secretary" means the secretary of the depart-  
37 ment of health and human resources.

38 (h) "Single state agency" means the single state  
39 agency for medicaid in this state.

**§9-4C-2. General medicaid enhancement board.**

1 (a) The general medicaid enhancement board creat-  
2 ed by this section is hereby continued in all respects,  
3 except as otherwise provided in this section. Current  
4 members of the board who represent groups not  
5 represented on the board on and after the effective  
6 date of this act shall not serve on the board after such  
7 date. The governor shall appoint new members to the  
8 board to represent groups not previously represented  
9 on the board within thirty days after the effective date  
10 of this act.

11 (b) This board shall consist of eighteen members  
12 appointed by the governor, including two lay persons  
13 and one representative from each of the following  
14 sixteen groups: Audiologists, behavioral health centers,  
15 chiropractors, community care centers, independent  
16 laboratory services, independent X-ray services,  
17 occupational therapists, opticians, optometrists, physi-  
18 cal therapists, podiatrists, private duty nurses, psychol-  
19 ogists, rehabilitative specialists, respiratory therapists  
20 and speech therapists. In addition to the members  
21 appointed by the governor, the secretary, or his or her  
22 designee, shall serve as an ex officio, nonvoting  
23 member of the board.

24 (c) After the initial appointment of the board, any  
25 appointment to fill a vacancy shall be for the unex-  
26 pired term only and shall be made in the same  
27 manner as the initial appointment.

28 (d) The terms of all members expire on the first day  
29 of July, one thousand nine hundred ninety-four.

**§9-4C-5. Facility providers' medicaid enhancement board.**

1 (a) The outpatient hospital medicaid enhancement  
2 board created by this section shall cease to exist on the  
3 effective date of this act.

4 (b) There is hereby created the facility providers'  
5 medicaid enhancement board to consist of seven  
6 members. In order to carry out the purpose of this  
7 article, the board shall represent ambulatory surgical  
8 centers, inpatient hospital service providers, outpatient  
9 hospital service providers, nursing facility service  
10 providers and intermediate care facility for the men-  
11 tally retarded service providers.

12 (c) The board shall consist of one representative  
13 from each of the aforementioned classes of health care  
14 providers, one lay person and the secretary, or his or  
15 her designee, who shall serve as an ex officio, nonvot-  
16 ing member. The governor shall make all appoint-  
17 ments within thirty days after the effective date of  
18 this act.

19 (d) After initial appointment of the board, any  
20 appointment to fill a vacancy shall be for the unex-  
21 pired term only, shall be made in the same manner as  
22 the initial appointment, and the terms of all members  
23 shall expire on the first day of July, one thousand nine  
24 hundred ninety-four.

#### **§9-4C-7. Powers and duties.**

1 (a) Each board created pursuant to this article shall:  
2 (1) Develop, recommend and review reimbursement  
3 methodology where applicable, and develop and rec-  
4 ommend a reasonable provider fee schedule, in rela-  
5 tion to its respective provider groups, so that the  
6 schedule conforms with federal medicaid laws and  
7 remains within the limits of annual funding available  
8 to the single state agency for the medicaid program. In  
9 developing the fee schedule the board may refer to a  
10 nationally published regional specific fee schedule, if  
11 available, as selected by the secretary in accordance  
12 with section eight of this article. The board may  
13 consider identified health care priorities in developing  
14 its fee schedule to the extent permitted by applicable  
15 federal medicaid laws, and may recommend higher  
16 reimbursement rates for basic primary and preventa-  
17 tive health care services than for other services. In  
18 identifying basic primary and preventative health care

19 services, the board may consider factors, including, but  
20 not limited to, services defined and prioritized by the  
21 basic services task force of the health care planning  
22 commission in its report issued in December of the  
23 year one thousand nine hundred ninety-two; and  
24 minimum benefits and coverages for policies of insur-  
25 ance as set forth in section fifteen, article fifteen,  
26 chapter thirty-three of this code and section four,  
27 article sixteen-c of said chapter and rules of the  
28 insurance commissioner promulgated thereunder. If  
29 the single state agency approves the adjustments to  
30 the fee schedule, it shall implement the provider fee  
31 schedule;

32 (2) Review its respective provider fee schedule on a  
33 quarterly basis and recommend to the single state  
34 agency any adjustments it considers necessary. If the  
35 single state agency approves any of the board's recom-  
36 mendations, it shall immediately implement those  
37 adjustments and shall report the same to the joint  
38 committee on government and finance on a quarterly  
39 basis;

40 (3) Assist and enhance communications between  
41 participating providers and the department of health  
42 and human resources;

43 (4) Meet and confer with representatives from each  
44 specialty area within its respective provider group so  
45 that equity in reimbursement increases or decreases  
46 may be achieved to the greatest extent possible and  
47 when appropriate to meet and confer with other  
48 provider boards; and

49 (5) Appoint a chairperson to preside over all official  
50 transactions of the board.

51 (b) Each board may carry out any other powers and  
52 duties as prescribed to it by the secretary.

53 (c) Nothing in this section gives any board the  
54 authority to interfere with the discretion and judg-  
55 ment given to the single state agency that administers  
56 the state's medicaid program. If the single state agency  
57 disapproves the recommendations or adjustments to



58 the fee schedule, it is expressly authorized to make  
59 any modifications to fee schedules as are necessary to  
60 ensure that total financial requirements of the agency  
61 for the current fiscal year with respect to the state's  
62 medicaid plan are met and shall report such modifica-  
63 tions to the joint committee on government and  
64 finance on a quarterly basis. The purpose of each  
65 board is to assist and enhance the role of the single  
66 state agency in carrying out its mandate by acting as  
67 a means of communication between the health care  
68 provider community and the agency.

69 (d) In addition to the duties specified in subsection  
70 (a) of this section, the ambulance service provider  
71 medicaid board shall work with the health care cost  
72 review authority to develop a method for regulating  
73 rates charged by ambulance services. The health care  
74 cost review authority shall report its findings to the  
75 Legislature by the first day of January, one thousand  
76 nine hundred ninety-four. The costs of the report shall  
77 be paid by the health care cost review authority. In  
78 this capacity only, the chairperson of the health care  
79 cost review authority shall serve as an ex officio,  
80 nonvoting member of the board.

81 (e) On a quarterly basis, the single state agency and  
82 the board shall report the status of the fund, any  
83 adjustments to the fee schedule and the fee schedule  
84 for each health care provider identified in section two  
85 of this article to the joint committee on government  
86 and finance.

#### ARTICLE 5. MISCELLANEOUS PROVISIONS.

##### §9-5-11. Right of subrogation by department of health and human resources to the rights of recipients of medical assistance; rules as to effect of subrogation.

1 (a) If medical assistance is paid or will be paid to a  
2 provider of medical care on behalf of a recipient of  
3 medical assistance because of any sickness, injury,  
4 disease or disability, and another person is legally  
5 liable for such expense, either pursuant to contract,  
6 negligence or otherwise, the department of health and

7 human resources shall have a right to recover full  
8 reimbursement from any award or settlement for such  
9 medical assistance from such other person, or from the  
10 recipient of such assistance if he has been reimbursed  
11 by the other person. The department shall be legally  
12 subrogated to the rights of the recipient against the  
13 person so liable, but only to the extent of the reason-  
14 able value of the medical assistance paid and attribut-  
15 able to the sickness, injury, disease or disability for  
16 which the recipient has received damages. When an  
17 action or claim is brought by a medical assistance  
18 recipient or by someone on his or her behalf against  
19 a third party who may be liable for the injury, disease,  
20 disability or death of a medical assistance recipient,  
21 any settlement, judgment or award obtained is subject  
22 to the claim of the department of health and human  
23 resources for reimbursement of an amount sufficient  
24 to reimburse the department the full amount of  
25 benefits paid on behalf of the recipient under the  
26 medical assistance program for the injury, disease,  
27 disability or death of the medical assistance recipient.  
28 The subrogation claim of the department of health and  
29 human resources shall not exceed the amount of  
30 medical expenses for the injury, disease, disability or  
31 death of the recipient paid by the department on  
32 behalf of the recipient. The right of subrogation  
33 created in this section includes all portions of the  
34 cause of action, by either settlement, compromise,  
35 judgment or award, notwithstanding any settlement  
36 allocation or apportionment that purports to dispose of  
37 portions of the cause of action not subject to subroga-  
38 tion. Any settlement, compromise, judgment or award  
39 that excludes or limits the cost of medical services or  
40 care shall not preclude the department of health and  
41 human resources from enforcing its rights under this  
42 section. The secretary may compromise, settle and  
43 execute a release of any such claim in whole or in  
44 part.

45 (b) Nothing in this section shall be construed so as to  
46 prevent the recipient of medical assistance from  
47 maintaining an action for injuries received by him  
48 against any other person and from including therein,

49 as part of the compensatory damages sought to be  
50 recovered, the amount or amounts of his medical  
51 expenses, even though such person received medical  
52 assistance in the payment of such medical expenses, in  
53 whole or in part.

54 If the action be tried by a jury, the jury shall not be  
55 informed as to the interest of the department of health  
56 and human resources, if any, and such fact shall not  
57 be disclosed to the jury at any time. The trial judge  
58 shall, upon the entry of judgment on the verdict,  
59 direct that an amount equal to the amount of medical  
60 assistance given be withheld and paid over to the  
61 department of health and human resources. Irrespec-  
62 tive of whether the case be terminated by judgment or  
63 by settlement without trial, from the amount required  
64 to be paid to the department of health and human  
65 resources there shall be deducted the attorney fees  
66 attributable to such amount in accordance with and in  
67 proportion to the fee arrangement made between the  
68 recipient and his attorney of record so that the  
69 department shall bear the pro rata portion of such  
70 attorney fees. Nothing in this section shall preclude  
71 any person who has received medical assistance from  
72 settling any cause of action which he may have against  
73 another person and delivering to the department of  
74 health and human resources, from the proceeds of  
75 such settlement, the sums received by him from the  
76 department or paid by the department for his medical  
77 assistance. Any release given by a person who has  
78 received medical assistance to another person releas-  
79 ing such other person of liability with respect to any  
80 cause of action shall be binding upon the department  
81 of health and human resources if the person for whose  
82 benefit the release inures is unaware of, or has not  
83 been informed of, the interest of the department  
84 therein. If such other person is aware of or has been  
85 informed of the interest of the department of health  
86 and human resources in the matter, it shall be the  
87 duty of the person to whose benefit the release inures  
88 to withhold so much of the settlement as may be  
89 necessary to reimburse the department to the extent  
90 of its interest in the settlement. No judgment, award

91 of or settlement in any action or claim by a medical  
92 assistance recipient to recover damages for injuries,  
93 disease or disability, in which the department of  
94 health and human resources has interest, shall be  
95 satisfied without first giving the department notice  
96 and reasonable opportunity to establish its interest. If,  
97 after being notified in writing of a subrogation claim  
98 and possible liability of the recipient, guardian,  
99 attorney or personal representative for failure to  
100 subrogate the department, a recipient, his or her  
101 guardian, attorney or personal representative disposes  
102 of the funds representing the judgment, settlement or  
103 award, without the written approval of the depart-  
104 ment, that person shall be liable to the department for  
105 any amount that, as a result of the disposition of the  
106 funds, is not recoverable by the department. In the  
107 event that a controversy arises concerning the subro-  
108 gation claims by the department, an attorney shall  
109 interplead, pursuant to rule twenty-two of the rules of  
110 civil procedure, the portion of the recipient's settle-  
111 ment that will satisfy the department exclusive of  
112 attorneys fees and costs regardless of any contractual  
113 arrangement between the client and the attorney.

**§9-5-11a. Notice of action or claim.**

1 If either the medical assistance recipient or the  
2 department of health and human resources brings an  
3 action or claim against a third person, the recipient,  
4 his attorney or such department shall, within thirty  
5 days of filing the action, give to the other written  
6 notice of the action or claim by certified mail. This  
7 notice shall contain the name of the third person and  
8 the court in which the action is brought. If the  
9 department of health and human resources institutes  
10 said action, the notice shall advise the recipient of  
11 their right to bring such action in their own name, in  
12 which they may include as a part of their claim the  
13 sums claimed by such department. Proof of such  
14 notice shall be filed in said action. If an action or claim  
15 is brought by either the recipient or the department of  
16 health and human resources, the other may, at any  
17 time before trial, become a party to the action, or shall

18 consolidate his action or claim with the other if  
19 brought independently: *Provided*, That this consolida-  
20 tion or entry as a party does not delay the proceedings.

**§9-5-11b. Release of information.**

1 (a) All recipients of medical assistance under the  
2 medicaid program shall be deemed to have authorized  
3 all third parties including, but not limited to, insur-  
4 ance companies and providers of medical care, to  
5 release to the department of health and human  
6 resources information needed by the department to  
7 secure or enforce its rights as assignee under this  
8 chapter.

9 (b) Every insurer and provider of medical care shall  
10 furnish records or information pertaining to the  
11 coverage of any individual or the medical benefits paid  
12 or claims made under a policy or obligation, if the  
13 department of health and human resources:

14 (1) Requests the information in writing; and

15 (2) Certifies that the individual is an applicant for or  
16 recipient of medical assistance or is an individual who  
17 is legally responsible for an applicant or recipient. The  
18 department of health and human resources may  
19 request only the records or information necessary to  
20 determine if insurance benefits have been or should  
21 have been claimed or paid with respect to items of  
22 medical care and services that were received by a  
23 particular individual and or which medical assistance  
24 coverage would otherwise be available.

25 (c) The insurance commissioner shall establish  
26 guidelines for information requests pursuant to this  
27 section.

**§9-5-17. Nonprofit agency or facility, in receipt of medicaid moneys, shall provide annual accounting of gross receipts and disbursements including salaries.**

1 Any nonprofit health care agency or facility which  
2 receives medicaid moneys shall, as a condition of the  
3 receipt of same, provide an annual accounting of that

4 facility's or provider's receipts and disbursements,  
5 including the total salaries of all employees and  
6 administrators, with one copy of same to be submitted  
7 to the joint committee on government and finance and  
8 one copy submitted to health care cost review author-  
9 ity on or before the fifteenth day of the first month of  
10 the year, for the preceding year.

## CHAPTER 11. TAXATION.

### ARTICLE 10. PROCEDURE AND ADMINISTRATION.

#### §11-10-18a. Additions to tax for failure to pay estimated income or business franchise tax.

1 (a) *Additions to tax.* — Except as otherwise provided  
2 in this section, in the case of any underpayment of  
3 estimated tax, there shall be added to the tax due for  
4 the taxable year, under article twenty-one, twenty-  
5 three or twenty-four of this chapter, an amount  
6 determined by applying the rate established under  
7 section seventeen or seventeen-a of this article, as  
8 appropriate for the taxable year, to the amount of the  
9 underpayment of estimated tax, for the period of the  
10 underpayment.

11 (b) *Amount of underpayment.* — For purposes of  
12 subsection (a), the amount of the underpayment shall  
13 be the excess of the amount determined under subdivi-  
14 sion (1) of this subsection over the amount deter-  
15 mined under subdivision (2) of this subsection.

16 (1) The amount of the installment required to be  
17 paid on or before the due date for the installment, if  
18 the estimated tax due for the taxable year were an  
19 amount equal to ninety percent of the tax shown on  
20 the annual return for the taxable year divided by the  
21 number of installments taxpayer was required to  
22 make for the taxable year, or, if no return was filed,  
23 ninety percent of the tax for such year divided by the  
24 number of installment payments taxpayer was  
25 required to make for the taxable year.

26 (2) The amount, if any, of the installment paid on or  
27 before the last date prescribed for payment of that  
28 installment.

29 (c) *Period of underpayment.* — The period of under-  
30 payment of an installment shall run from the date the  
31 installment was required to be paid (due date) to  
32 whichever of the following dates is the earlier:

33 (1) The due date of the annual return following the  
34 close of the taxable year for which the installment was  
35 due (determined without regard to any extension of  
36 time for filing such annual return); or

37 (2) With respect to any portion of the underpayment,  
38 the date on which such portion is paid. For purposes  
39 of this subdivision, a payment of estimated tax shall be  
40 credited against unpaid required installments in the  
41 order in which such installments are required to be  
42 paid.

43 (d) *Exception.* — Notwithstanding the provisions of  
44 the preceding subsections, the additions to tax with  
45 respect to any underpayment of any installment shall  
46 not be imposed if the total amount of all payments of  
47 estimated tax made on or before the last date pres-  
48 cribed for the payment of such installment equals or  
49 exceeds the amount which would have been required  
50 to be paid on or before such date if the estimated tax  
51 were whichever of the following is lesser:

52 (1) *Prior year's tax.* — One hundred percent of the  
53 tax shown on the return of the taxpayer for the  
54 preceding taxable year, if a return showing a liability  
55 for tax was filed by the taxpayer for the preceding  
56 taxable year and such preceding year was a taxable  
57 year of twelve months;

58 (2) *Annualized tax.* — In the case of any required  
59 installment, if the taxpayer establishes that the  
60 annualized income installment is less than the amount  
61 determined under subdivision (1) of this subsection  
62 and under subsection (b) of this section, then the  
63 amount of such required installment shall be the  
64 annualized income installment. For purposes of this  
65 subdivision, there shall be four required installments  
66 for each taxable year and the "annualized income  
67 installment" is the difference (if any) determined by  
68 subtracting the amount determined under paragraph

69 (B) of this subdivision from the amount determined  
70 under the appropriate clause of paragraph (A) of this  
71 subdivision. When making these computations, the  
72 rules in paragraph (C) of this subdivision shall be  
73 followed:

74 (A) (i) *Corporations.* — An amount equal to the  
75 applicable percentage of the tax of a corporation for  
76 the taxable year computed by placing on an annual-  
77 ized basis its taxable income:

78 (I) For the first three months of the taxable year, in  
79 the case of the first installment;

80 (II) For the first three months of or the first five  
81 months of the taxable year, in the case of the second  
82 installment;

83 (III) For the first six months or the first eight  
84 months of the taxable year, in the case of the third  
85 installment; and

86 (IV) For the first nine months or for the first eleven  
87 months of the taxable year, in the case of the fourth  
88 installment.

89 (ii) *Individuals.* — An amount equal to the applica-  
90 ble percentage of the tax of an individual for the  
91 taxable year computed by placing on an annualized  
92 basis the taxable income of the individual for months  
93 in the taxable year ending before the due date for the  
94 installment.

95 (B) The aggregate amount of any prior required  
96 installments for the taxable year.

97 (C) *Special rules.* — For purposes of this subdivision:

98 (i) *Annualization.* — Taxpayer's taxable income shall  
99 be placed on an annualized basis in the same manner  
100 that taxable income is annualized for federal income  
101 tax purposes for the taxable year.

102 (ii) *Applicable percentage.* — The applicable percent-  
103 age shall be determined from the following table:



104 In the case of the following	The applicable
105 required installments:	percentage is:
106 1st .....	22.5
107 2nd.....	45
108 3rd .....	67.5
109 4th .....	90

110 (e) *Additional exceptions.* —

111 (1) *Where tax amount is small.* — No addition to tax  
 112 shall be imposed under subsection (a) of this section  
 113 for any taxable year if the tax shown on the return for  
 114 such taxable year (or, if no return is filed, the tax),  
 115 reduced by the credit allowable for withheld tax, is  
 116 less than two hundred fifty dollars.

117 (2) *Where individual has no personal income tax*  
 118 *liability for preceding taxable year.* — No addition to  
 119 tax shall be imposed under subsection (a) of this  
 120 section for any taxable year if:

121 (A) The individual's preceding taxable year was a  
 122 taxable year of twelve months;

123 (B) The individual did not have any West Virginia  
 124 personal income tax liability for the preceding taxable  
 125 year;

126 (C) The individual was a citizen or resident of the  
 127 United States throughout the preceding taxable year;  
 128 and

129 (D) The individual's West Virginia personal income  
 130 tax liability for the current taxable year is less than  
 131 five thousand dollars.

132 (3) *Waiver in certain cases.* — No addition to tax  
 133 shall be imposed under subsection (a) of this section  
 134 with respect to any underpayment if and to the extent  
 135 the tax commissioner determines that by reason of  
 136 casualty, disaster or other unusual circumstances the  
 137 imposition of such addition to tax would be against  
 138 equity and good conscience.

139 (f) *Tax computed after application of credits against*  
 140 *tax.* — For purposes of this section, the term "tax"  
 141 means the amount of any annual tax or fee adminis-

142 tered under this article that is generally payable in  
143 two or more installment payments during the taxable  
144 year, minus the amount of credits allowable against  
145 such tax or fee, other than taxes withheld from the  
146 taxpayer under section seventy-one or seventy-one-a,  
147 article twenty-one of this chapter (relating to taxes  
148 withheld on wages, or from distributions of pass-  
149 through income to nonresident partners, S corporation  
150 shareholders or beneficiaries of an estate or trust).

151 (g) *Application of section in case of personal income*  
152 *tax withheld on wages.* —

153 (1) *In general.* — For purposes of applying this  
154 section, the amount of the credit allowed under section  
155 seventy-one, article twenty-one of this chapter, for the  
156 taxable year shall be deemed a payment of estimated  
157 tax, and an equal part of such amount shall be deemed  
158 to have been paid on each installment payment due  
159 date for such taxable year, unless the taxpayer estab-  
160 lishes the specific dates on which all amounts were  
161 actually withheld, in which case the amounts so  
162 withheld shall be deemed payments of estimated tax  
163 on the dates on which such amounts were actually  
164 withheld.

165 (2) *Separate application.* — The taxpayer may apply  
166 subdivision (1) of this subsection separately with  
167 respect to:

168 (A) Wage withholding; and

169 (B) All other amounts withheld for which credit is  
170 allowed under section seventy-one, article twenty-one  
171 of this chapter.

172 (h) *Application of section in case of income tax*  
173 *withheld by pass-through entities from distributions to*  
174 *nonresidents.* — For purposes of applying this section,  
175 the amount of credit allowed under section seventy-  
176 one-a, article twenty-one of this chapter to a nonres-  
177 ident distributee of a pass-through entity, shall be  
178 deemed to be a payment of estimated income tax for  
179 the taxable year of the nonresident distributee, and an  
180 equal part of such amount shall be deemed (only for

181 purposes of this section) to have been paid on each  
182 installment due date for the taxable year of the  
183 distributee, unless the distributee establishes the dates  
184 on which all amounts were actually withheld, in  
185 which case the amounts so withheld shall be deemed  
186 payments of estimated tax on the dates on which such  
187 amounts were actually withheld.

188 (i) *Special rule where personal income tax return*  
189 *filed on or before the thirty-first day of January.* — If  
190 on or before the last day of the first month following  
191 the end of the taxable year, the taxpayer files his or  
192 her annual personal income tax return for that taxable  
193 year and pays in full the amount computed on the  
194 return as payable, then no addition to tax shall be  
195 imposed under subsection (a) of this section with  
196 respect to any underpayment of the fourth required  
197 installment for that taxable year.

198 (j) *Special rules for farmers.* — For purposes of this  
199 section, if an individual is a farmer for any taxable  
200 year:

201 (1) There is only one required installment for that  
202 taxable year;

203 (2) The due date for such installment is the fifteenth  
204 day of January of the following taxable year;

205 (3) The amount of such installment shall be equal to  
206 the required annual payment determined under  
207 subsection (b) of this section by substituting “sixty-six  
208 and two-thirds percent” for “ninety percent”; and

209 (4) Subsection (h) of this section shall be applied:

210 (A) By substituting “the first day of March” for the  
211 phrase “the thirty-first day of January”; and

212 (B) By treating the required installment described in  
213 subdivision (1) of this subsection as the fourth  
214 required installment.

215 (k) *Fiscal years and short years.* —

216 (1) *Fiscal years.* — In applying this section to a  
217 taxable year beginning on any date other than the first

218 day of January, there shall be substituted, for the  
219 months specified in this section, the months of the  
220 fiscal year that correspond thereto.

221 (2) *Short taxable year.* — The application of this  
222 section to taxable years of less than twelve months  
223 shall be in accordance with regulations prescribed by  
224 the tax commissioner.

225 (l) *Reserved.* —

226 (m) *Estates and trusts.* —

227 (1) *In general.* — Except as otherwise provided in  
228 this subsection, this section shall apply to any estate or  
229 trust.

230 (2) *Exception for certain estates and certain trusts.*  
231 — With respect to any taxable year ending before the  
232 date two years after the date of the decedent's death,  
233 this section shall not apply to:

234 (A) The estate of such decedent; or

235 (B) Any trust all of which was treated for federal  
236 income tax purposes as owned by the decedent and to  
237 which the residue of the decedent's estate will pass  
238 under his or her will (or, if no will is admitted to  
239 probate, which is the trust primarily responsible for  
240 paying debts, taxes and expenses of administration).

241 (3) *Special rule for annualizations.* — In the case of  
242 any estate or trust to which this section applies,  
243 paragraph (A), subdivision (2), subsection (d) of this  
244 section shall be applied by substituting "ending before  
245 the date one month before the due date of the install-  
246 ment" for the phrase "ending before the due date for  
247 the installment".

248 (n) *Regulations.* — The tax commissioner may  
249 prescribe such regulations as the commissioner deems  
250 necessary to carry out the purpose of this section. This  
251 includes, but is not limited to, equitable regulations  
252 allowing payment of adjusted seasonal installments in  
253 lieu of annualized income installments when the  
254 commissioner determines, based on known facts and  
255 circumstances, that payment of the annualized income

256 installment will result in significant hardship to the  
257 taxpayer due to the seasonal nature of taxpayer's  
258 business, and equitable regulations for payment of  
259 estimated personal income tax by an individual who is:  
260 (1) An employee; (2) employed in another state for  
261 some portion or all of the taxable year; and (3)  
262 required to pay personal income taxes to such other  
263 state on (or measured by) wages earned in that state,  
264 for which credit is allowed under section twenty,  
265 article twenty-one of this chapter.

266 (o) *Effective date.* —

267 (1) This section as amended in the year one thou-  
268 sand nine hundred ninety-two, shall apply to taxable  
269 years beginning after the thirtieth day of June, one  
270 thousand nine hundred ninety-two, and this section as  
271 in effect on the first day of January, one thousand  
272 nine hundred ninety-two, is preserved and shall apply  
273 to taxable years beginning before the first day of July,  
274 one thousand nine hundred ninety-two.

275 (2) This section as amended in the year one thou-  
276 sand nine hundred ninety-three, shall apply to taxable  
277 years ending after the thirtieth day of June, one  
278 thousand nine hundred ninety-three. For taxable  
279 years ending on or before such dates, the provisions of  
280 this section as in effect for such years is fully preserved.

**§11-10-18b. Additions to tax for failure to pay any other  
estimated tax.**

1 (a) *General rule.* — If a person required to make  
2 monthly or quarterly installment payments of any  
3 annual tax administered under this article, except the  
4 taxes imposed by article twenty-one, twenty-three or  
5 twenty-four of this chapter fails to timely remit any  
6 installment payment of such tax or remits less than  
7 the amount of the required installment payment of  
8 such tax, there shall be added to the tax due for the  
9 taxable year an amount determined by applying the  
10 rate established under section seventeen or seventeen-  
11 a of this article, as appropriate for the taxable year, to  
12 the amount of the underpayment of estimated tax, for  
13 the period of the underpayment.

14 (1) *Quarterly installment payments.* — If a person  
15 required to make quarterly installment payments of  
16 estimated tax timely pays estimated tax during the  
17 taxable year equal to seventy-five percent or more of  
18 such person's actual liability for such tax for that  
19 taxable year, no additions to tax shall be imposed  
20 under this section with respect to such payments.  
21 Estimated tax is paid timely if at least one fourth of  
22 the tax due for the taxable year is paid by the due date  
23 of each installment for that year.

24 (2) *Monthly installment payments.* — If a person  
25 required to make monthly installment payments of  
26 estimated tax timely pays estimated tax during the  
27 taxable year equal to at least eleven twelfths of such  
28 person's actual liability for such tax for that taxable  
29 year, no additions to tax shall be imposed under this  
30 section with respect to such payments. Estimated tax  
31 is paid timely if at least one twelfth of the tax due for  
32 the taxable year is paid by the due date of each  
33 installment for that year.

34 (b) *Amount of underpayment.* — For purposes of  
35 subsection (a) of this section, the amount of the  
36 underpayment shall be the excess of the amount that  
37 should have been paid by the due date of the required  
38 installment payment over the amount taxpayer remit-  
39 ted by the due date of the required installment  
40 payment.

41 (c) *Period of underpayment.* — The period of under-  
42 payment of any installment shall run from the date  
43 the installment was required to be paid (due date) to  
44 whichever of the following dates is the earlier:

45 (1) The due date of the annual return following the  
46 close of the taxable year for which the installment was  
47 due (determined without regard to any extension of  
48 time for filing such annual return); or

49 (2) With respect to any portion of the underpayment,  
50 the date on which such portion is paid. For purposes  
51 of this subdivision, a payment of estimated tax shall be  
52 credited against unpaid required installments in the  
53 order in which such installments are required to be

54 paid.

55 (d) *Waiver in certain cases.* — No addition to tax  
56 shall be imposed under this section with respect to any  
57 underpayment of estimated tax if and to the extent  
58 the tax commissioner determines that:

59 (1) By reason of casualty, disaster or other unusual  
60 circumstances the imposition of such addition would  
61 be against equity and good conscience; or

62 (2) The amount of the installment payment remitted  
63 was determined using the statutory measure of the  
64 particular tax, as received or accrued under taxpayer's  
65 method of accounting during the period to which the  
66 installment payment relates, and the applicable rate of  
67 tax.

68 (e) *Burden of proof.* — The tax commissioner shall  
69 make his or her determination under subsection (d) of  
70 this section based upon relevant facts and circumstan-  
71 ces established by the taxpayer through such proof or  
72 proofs as the tax commissioner may require.

73 (f) *Short tax years.* — This section shall apply to  
74 short tax years under rules promulgated by the tax  
75 commissioner.

76 (g) *Effective date.* — This section shall apply to  
77 taxable years ending after the thirtieth day of June,  
78 one thousand nine hundred ninety-three.

**ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.**

**§11-12B-3. Imposition of tax, credit.**

1 (a) *Imposition of tax.* — Upon every person exercis-  
2 ing the privilege of engaging within this state in  
3 severing, extracting, reducing to possession or produc-  
4 ing coal for sale, profit or commercial use there is  
5 hereby imposed an annual minimum severance tax  
6 equal to fifty cents per ton of coal produced by the  
7 taxpayer for sale, profit or commercial use during the  
8 taxable year: *Provided,* That for taxable years ending  
9 after the thirty-first day of May, one thousand nine  
10 hundred ninety-three, the minimum severance tax  
11 imposed on coal produced by the taxpayer for sale,

12 profit or commercial use during such taxable year  
13 shall be seventy-five cents per ton, with such rate  
14 increase to apply only to tons of coal produced after  
15 the thirty-first day of May, one thousand nine hun-  
16 dred ninety-three.

17 (b) *Credit against article 13A tax.* — A person who  
18 pays the minimum severance tax imposed by this  
19 article shall be allowed a credit against the severance  
20 tax imposed on the privilege of producing coal by  
21 section three, article thirteen-a of this chapter, but not  
22 including the additional severance tax on coal imposed  
23 by section six of said article. The amount of credit  
24 allowed shall be equal to the liability of the taxpayer  
25 for the taxable year for payment of the minimum  
26 severance tax on coal imposed by this article: *Provid-*  
27 *ed,* That the amount of credit allowed by this section  
28 shall not exceed the severance tax liability of the  
29 taxpayer for the taxable year determined under  
30 section three of said article exclusive of the additional  
31 tax on coal imposed by section six of said article after  
32 application of all credits to which the taxpayer may be  
33 entitled except any credit allowed pursuant to chapter  
34 five-e of this code, any credit for installment payments  
35 of estimated tax paid pursuant to section six of this  
36 article during the taxable year and any credit for  
37 overpayment of article thirteen-a tax. Notwithstanding  
38 anything herein to the contrary, in no event shall the  
39 credit allowed under chapter five-e of this code be  
40 allowed as a credit against the minimum severance tax  
41 imposed by this article.

**§11-12B-6. Periodic installment payments of estimated tax.**

1 (a) *General rule.* — The annual tax levied under this  
2 article shall be due and payable in monthly instal-  
3 lments during the taxable year. Installment payments  
4 shall be due and payable on or before the last day of  
5 the month following the month in which the tax  
6 accrued: *Provided,* That the installment payment  
7 otherwise due under this subsection on or before the  
8 thirtieth day of June each year shall be remitted to  
9 the tax commissioner on or before the fifteenth day of  
10 June each year.



11 (b) *Remittance form.* — Each such taxpayer shall, on  
12 or before the last day of each month, make out an  
13 estimate of the tax for which the taxpayer is liable for  
14 the preceding month, in the form prescribed by the  
15 tax commissioner, sign the same and mail it together  
16 with a remittance of the amount of tax due to the  
17 office of the tax commissioner: *Provided*, That the  
18 installment payment otherwise due under this section  
19 on or before the thirtieth day of June each year shall  
20 be remitted to the tax commissioner on or before the  
21 fifteenth day of June.

22 (c) *Exception.* — Notwithstanding the provisions of  
23 subsection (a) of this section, the tax commissioner, if  
24 he or she deems it necessary to ensure payment of the  
25 tax, may require the return and payment under this  
26 section for periods of shorter duration than that  
27 prescribed in said subsection.

**ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAXES.**

**§11-13A-1. Short title; arrangement and classification.**

1 This article may be cited as the “Severance and  
2 Business Privilege Tax Act of 1993”. No inference,  
3 implication or presumption of legislative construction  
4 shall be drawn or made by reason of the location or  
5 grouping of any particular section or provision or  
6 portion of this article, and no legal effect shall be given  
7 to any descriptive matter of headings relating to any  
8 part, section, subsection, subdivision or paragraph of  
9 this article.

**§11-13A-2. Definitions.**

1 (a) *General rule.* — When used in this article, or in  
2 the administration of this article, the terms defined in  
3 subsection (b), (c) or (d) of this section shall have the  
4 meanings ascribed to them by this section, unless a  
5 different meaning is clearly required by the context in  
6 which the term is used, or by specific definition.

7 (b) *General terms defined.* — Definitions in this  
8 subsection apply to all persons subject to the taxes  
9 imposed by this article.

10 (1) "Business" includes all activities engaged in, or  
11 caused to be engaged in, with the object of gain or  
12 economic benefit, direct or indirect, and whether  
13 engaged in for profit, or not for profit, or by a  
14 governmental entity: *Provided*, That "business" does  
15 not include services rendered by an employee within  
16 the scope of his or her contract of employment.  
17 Employee services, services by a partner on behalf of  
18 his or her partnership and services by a member of  
19 any other business entity on behalf of that entity, are  
20 the business of the employer, or partnership, or other  
21 business entity, as the case may be, and reportable as  
22 such for purposes of the taxes imposed by this article.

23 (2) "Corporation" includes associations, joint-stock  
24 companies and insurance companies. It also includes  
25 governmental entities when and to the extent such  
26 governmental entities engage in activities taxable  
27 under this article.

28 (3) "Delegate" in the phrase "or his delegate", when  
29 used in reference to the tax commissioner, means any  
30 officer or employee of the state tax division of the  
31 department of tax and revenue duly authorized by the  
32 tax commissioner directly, or indirectly by one or  
33 more redelegations of authority, to perform the  
34 function mentioned or described in this article or  
35 regulations promulgated thereunder.

36 (4) "Fiduciary" means and includes, a guardian,  
37 trustee, executor, administrator, receiver, conservator  
38 or any person acting in any fiduciary capacity for any  
39 person.

40 (5) "Gross proceeds" means the value, whether in  
41 money or other property, actually proceeding from the  
42 sale or lease of tangible personal property, or from the  
43 rendering of services, without any deduction for the  
44 cost of property sold or leased or expenses of any kind.

45 (6) "Includes" and "including" when used in a  
46 definition contained in this article shall not be deemed  
47 to exclude other things otherwise within the meaning  
48 of the term being defined.

49 (7) "Partner" includes a member of a syndicate,  
50 group, pool, joint venture or other organization which  
51 is a "partnership" as defined in this section.

52 (8) "Partnership" includes a syndicate, group, pool,  
53 joint venture or other unincorporated organization  
54 through or by means of which any privilege taxable  
55 under this article is exercised, and which is not within  
56 the meaning of this article a trust or estate or corpo-  
57 ration. "Partnership" includes a limited liability  
58 company which is treated as a partnership for federal  
59 income tax purposes.

60 (9) "Person" or "company" are herein used inter-  
61 changeably and include any individual, firm, partner-  
62 ship, mining partnership, joint venture, association,  
63 corporation, trust or other entity, or any other group  
64 or combination acting as a unit, and the plural as well  
65 as the singular number, unless the intention to give a  
66 more limited meaning is declared by the context.

67 (10) "Sale" includes any transfer of the ownership or  
68 title to property, whether for money or in exchange  
69 for other property or services, or any combination  
70 thereof. "Sale" includes a lease of property, whether  
71 the transaction be characterized as a rental, lease,  
72 hire, bailment or license to use. "Sale" also includes  
73 rendering services for a consideration, whether direct  
74 or indirect.

75 (11) "Service" includes all activities engaged in by a  
76 person for a consideration, which involve the render-  
77 ing of a service as distinguished from the sale of  
78 tangible personal property: *Provided*, That "service"  
79 does not include: (A) Services rendered by an employ-  
80 ee to his or her employer under a contract of employ-  
81 ment; (B) contracting; or (C) severing or processing  
82 natural resources.

83 (12) "Tax" means any tax imposed by this article  
84 and, for purposes of administration and collection of  
85 such tax, it includes any interest, additions to tax or  
86 penalties imposed with respect thereto under article  
87 ten of this chapter.

88 (13) "Tax commissioner" or "commissioner" means  
89 the tax commissioner of the state of West Virginia, or  
90 his or her delegate.

91 (14) "Taxable year" means the calendar year, or the  
92 fiscal year ending during such calendar year, upon the  
93 basis of which a tax liability is computed under this  
94 article. In the case of a return made under this article,  
95 or regulations of the tax commissioner, for a fractional  
96 part of a year, the term "taxable year" means the  
97 period for which such return is made.

98 (15) "Taxpayer" means any person subject to any  
99 tax imposed by this article.

100 (16) "This code" means the code of West Virginia,  
101 one thousand nine hundred thirty-one, as amended.

102 (17) "This state" means the state of West Virginia.

103 (18) "Withholding agent" means any person required  
104 by law to deduct and withhold any tax imposed by this  
105 article or under regulations promulgated by the tax  
106 commissioner.

107 (c) *Specific definitions for producers of natural*  
108 *resources.* —

109 (1) "Coal" means and includes any material com-  
110 posed predominantly of hydrocarbons in a solid state.

111 (2) "Economic interest" for the purpose of this  
112 article is synonymous with the economic interest  
113 ownership required by Section 611 of the Internal  
114 Revenue Code in effect on the thirty-first day of  
115 December, one thousand nine hundred eighty-five,  
116 entitling the taxpayer to a depletion deduction for  
117 income tax purposes: *Provided*, That a person who  
118 only receives an arm's length royalty shall not be  
119 considered as having an economic interest.

120 (3) "Extraction of ores or minerals from the ground"  
121 includes extraction by mine owners or operators of  
122 ores or minerals from the waste or residue of prior  
123 mining only when such extraction is sold.

124 (4) "Gross value" in the case of natural resources  
125 means the market value of the natural resource

126 product, in the immediate vicinity, where severed,  
127 determined after application of post production pro-  
128 cessing generally applied by the industry to obtain  
129 commercially marketable or usable natural resource  
130 products. For all natural resources, "gross value" is to  
131 be reported as follows:

132 (A) For natural resources severed or processed (or  
133 both severed and processed) and sold during a report-  
134 ing period, gross value is the gross proceeds received  
135 or receivable by the taxpayer.

136 (B) In a transaction involving related parties, gross  
137 value shall not be less than the fair market value for  
138 natural resources of similar grade and quality.

139 (C) In the absence of a sale, gross value shall be the  
140 fair market value for natural resources of similar  
141 grade and quality.

142 (D) If severed natural resources are purchased for  
143 the purpose of processing and resale, the gross value is  
144 the amount received or receivable during the report-  
145 ing period reduced by the amount paid or payable to  
146 the taxpayer actually severing the natural resource. If  
147 natural resources are severed outside the state of West  
148 Virginia and brought into the state of West Virginia by  
149 the taxpayer for the purpose of processing and sale,  
150 the gross value is the amount received or receivable  
151 during the reporting period reduced by the fair  
152 market value of natural resources of similar grade and  
153 quality and in the same condition immediately preced-  
154 ing the processing of the natural resources in this  
155 state.

156 (E) If severed natural resources are purchased for  
157 the purpose of processing and consumption, the gross  
158 value is the fair market value of processed natural  
159 resources of similar grade and quality reduced by the  
160 amount paid or payable to the taxpayer actually  
161 severing the natural resource. If severed natural  
162 resources are severed outside the state of West Virgin-  
163 ia and brought into the state of West Virginia by the  
164 taxpayer for the purpose of processing and consump-  
165 tion, the gross value is the fair market value of

166 processed natural resources of similar grade and  
167 quality reduced by the fair market value of natural  
168 resources of similar grade and quality and in the same  
169 condition immediately preceding the processing of the  
170 natural resources.

171 (F) In all instances, the gross value shall be reduced  
172 by the amount of any federal energy tax imposed upon  
173 the taxpayer after the first day of June, one thousand  
174 nine hundred ninety-three, but shall not be reduced  
175 by any state or federal taxes, royalties, sales commis-  
176 sions or any other expense.

177 (G) For natural gas, gross value is the value of the  
178 natural gas at the wellhead immediately preceding  
179 transportation and transmission.

180 (H) For limestone or sandstone quarried or mined,  
181 gross value is the value of such stone immediately  
182 upon severance from the earth.

183 (5) "Mining" includes not merely the extraction of  
184 ores or minerals from the ground but also those  
185 treatment processes necessary or incidental thereto.

186 (6) "Natural resources" means all forms of minerals  
187 including, but not limited to, rock, stone, limestone,  
188 coal, shale, gravel, sand, clay, natural gas, oil and  
189 natural gas liquids which are contained in or on the  
190 soils or waters of this state, and includes standing  
191 timber.

192 (7) "Processed" or "processing" as applied to:

193 (A) Oil and natural gas shall not include any conver-  
194 sion or refining process; and

195 (B) Limestone or sandstone quarried or mined shall  
196 not include any treatment process or transportation  
197 after the limestone or sandstone is severed from the  
198 earth.

199 (8) "Related parties" means two or more persons,  
200 organizations or businesses owned or controlled direct-  
201 ly or indirectly by the same interests. Control exists if  
202 a contract or lease, either written or oral, is entered  
203 into whereby one party mines or processes natural

204 resources owned or held by another party and the  
205 owner or lessor participates in the severing, processing  
206 or marketing of the natural resources or receives any  
207 value other than an arm's length passive royalty  
208 interest. In the case of related parties, the tax commis-  
209 sioner may apportion or allocate the receipts between  
210 or among such persons, organizations or businesses if  
211 he determines that such apportionment or allocation is  
212 necessary to more clearly reflect gross value.

213 (9) "Severing" or "severed" means the physical  
214 removal of the natural resources from the earth or  
215 waters of this state by any means: *Provided*, That  
216 "severing" or "severed" shall not include the removal  
217 of natural gas from underground storage facilities into  
218 which the natural gas has been mechanically injected  
219 following its initial removal from earth: *Provided*,  
220 *however*, That "severing" or "severed" oil and natural  
221 gas shall not include any separation process of oil or  
222 natural gas commonly employed to obtain marketable  
223 natural resource products.

224 (10) "Stock" includes shares in an association, joint-  
225 stock company or corporation.

226 (11) "Taxpayer" means and includes any individual,  
227 partnership, joint venture, association, corporation,  
228 receiver, trustee, guardian, executor, administrator,  
229 fiduciary or representative of any kind engaged in the  
230 business of severing or processing (or both severing  
231 and processing) natural resources in this state for sale  
232 or use. In instances where contracts (either oral or  
233 written) are entered into whereby persons, organiza-  
234 tions or businesses are engaged in the business of  
235 severing or processing (or both severing and process-  
236 ing) a natural resource but do not obtain title to or do  
237 not have an economic interest therein, the party who  
238 owns the natural resource immediately after its  
239 severance or has an economic interest therein is the  
240 taxpayer.

241 (d) *Specific definitions for persons providing health*  
242 *care items or services. —*

243 (1) "Behavioral health services" means health care

244 related services provided by a behavioral health center  
245 as defined in section one, article two-a, chapter  
246 twenty-seven of this code or section one, article nine  
247 of said chapter.

248 (2) "Community care services" means home and  
249 community care services furnished by a provider  
250 pursuant to an individual plan of care, which also  
251 includes senior citizens groups that provide such  
252 services, but does not include services of home health  
253 agencies.

**§11-13A-3. Imposition of tax on privilege of severing coal,  
limestone or sandstone, or furnishing certain  
health care services; effective dates therefor.**

1 (a) *Imposition of tax.* — Upon every person exercis-  
2 ing the privilege of engaging or continuing within this  
3 state in the business of severing, extracting, reducing  
4 to possession and producing for sale, profit or commer-  
5 cial use coal, limestone or sandstone, or in the business  
6 of furnishing certain health care services, there is  
7 hereby levied and shall be collected from every person  
8 exercising such privilege an annual privilege tax.

9 (b) *Rate and measure of tax.* — The tax imposed in  
10 subsection (a) of this section shall be five percent of  
11 the gross value of the natural resource produced or  
12 the health care service provided, as shown by the  
13 gross income derived from the sale or furnishing  
14 thereof by the producer or the provider of the health  
15 care service, except as otherwise provided in this  
16 article. In the case of coal, this five percent rate of tax  
17 includes the thirty-five one hundredths of one percent  
18 additional severance tax on coal imposed by the state  
19 for the benefit of counties and municipalities as  
20 provided in section six of this article.

21 (c) *"Certain health care services" defined.* — For  
22 purposes of this section, the term "certain health care  
23 services" means, and is limited to, behavioral health  
24 services and community care services.

25 (d) *Tax in addition to other taxes.* — The tax  
26 imposed by this section, shall apply to all persons



27 severing or processing (or both severing and process-  
28 ing) in this state natural resources enumerated in  
29 subsection (a) of this section, and to all persons  
30 providing certain health care services in this state as  
31 enumerated in subsection (c) of this section, and shall  
32 be in addition to all other taxes imposed by law.

33 (e) *Effective date.* — This section, as amended in the  
34 year one thousand nine hundred ninety-three, shall  
35 apply to gross proceeds derived after the thirty-first  
36 day of May of such year. The language of this section,  
37 as in effect on the first day of January of such year,  
38 shall apply to gross proceeds derived prior to the first  
39 day of June of such year and, with respect to such  
40 gross proceeds, shall be fully and completely preserved.

**§11-13A-3a. Imposition of tax on privilege of severing  
natural gas or oil.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 severing natural gas or oil for sale, profit or commer-  
4 cial use, there is hereby levied and shall be collected  
5 from every person exercising such privilege an annual  
6 privilege tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be five percent of  
9 the gross value of the natural gas or oil produced, as  
10 shown by the gross proceed derived from the sale  
11 thereof by the producer, except as otherwise provided  
12 in this article.

13 (c) *Tax in addition to other taxes.* — The tax  
14 imposed by this section shall apply to all persons  
15 severing gas or oil in this state, and shall be in addition  
16 to all other taxes imposed by law.

17 (d) *Effective date.* — This section, as enacted in the  
18 year one thousand nine hundred ninety-three, shall  
19 apply to gross proceeds derived after the thirty-first  
20 day of May of such year. The language of section three  
21 of this article, as in effect on the first day of January  
22 of such year, shall apply to gross proceeds derived  
23 prior to the first day of June of such year and, with

24 respect to such gross proceeds, shall be fully and  
25 completely preserved.

**§11-13A-3b. Imposition of tax on privilege of severing  
timber.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 severing timber for sale, profit or commercial use,  
4 there is hereby levied and shall be collected from  
5 every person exercising such privilege an annual  
6 privilege tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be three and  
9 twenty-two hundredth percent of the gross value of  
10 the timber produced, as shown by the gross proceeds  
11 derived from the sale thereof by the producer, except  
12 as otherwise provided in this article.

13 (c) *Tax in addition to other taxes.* — The tax  
14 imposed by this section shall apply to all persons  
15 severing timber in this state, and shall be in addition  
16 to all other taxes imposed by law.

17 (d) *Effective date.* — This section, as amended in the  
18 year one thousand nine hundred ninety-three, shall  
19 apply to gross proceeds derived after the thirty-first  
20 day of May of such year. The language of section three  
21 of this article, as in effect on the first day of January  
22 of such year, shall apply to gross proceeds derived  
23 prior to the first day of June of such year and, with  
24 respect to such gross income, shall be fully and  
25 completely preserved.

**§11-13A-3c. Imposition of tax on privilege of severing other  
natural resources.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 severing, extracting, reducing to possession and pro-  
4 ducing for sale, profit or commercial use any other  
5 natural resource product or product not taxed under  
6 section three, three-a, three-b or four of this article,  
7 there is hereby levied and shall be collected from  
8 every person exercising this privilege and annual

9 privilege tax.

10 (b) *Rate and measure of tax.* — The tax imposed in  
11 subsection (a) of this section shall be four percent of  
12 the gross value of the natural resource produced, as  
13 shown by the gross proceeds derived from the sale  
14 thereof by producer, except as otherwise provided in  
15 this article: *Provided*, That beginning the first day of  
16 July, one thousand nine hundred ninety-three, the tax  
17 imposed by this section shall be levied and collected at  
18 the rate of four and one-half percent, and beginning  
19 the first day of July, one thousand nine hundred  
20 ninety-four, the tax imposed by this section shall be  
21 levied and collected at the rate of five percent.

22 (c) *Tax in addition to other taxes.* — The tax  
23 imposed by this section shall apply to all persons  
24 severing other natural resources in this state, and shall  
25 be in addition to all other taxes imposed by law.

26 (d) *Effective date.* — This section, as amended in the  
27 year one thousand nine hundred ninety-three, shall  
28 apply to gross proceeds derived after the thirty-first  
29 day of May of such year. The language of section three  
30 of this article, as in effect on the first day of January  
31 of such year, shall apply to gross proceeds derived  
32 prior to the first day of June of such year and, with  
33 respect to such gross proceeds shall be fully and  
34 completely preserved.

**§11-13A-7. Accounting periods and methods of accounting.**

1 (a) *General rule.* — For purposes of the taxes  
2 imposed by this article, a taxpayer's taxable year shall  
3 be the same as the taxpayer's taxable year for federal  
4 income tax purposes. If taxpayer has no taxable year  
5 for federal income tax purposes, then the calendar  
6 year shall be taxpayer's taxable year under this  
7 article.

8 (b) *Change of taxable year.* — If a taxpayer's taxable  
9 year is changed for federal income tax purposes,  
10 taxpayer's taxable year for purposes of this article  
11 shall be similarly changed. The taxpayer shall provide  
12 a copy of the authorization for such change from the

13 Internal Revenue Service, with taxpayer's annual  
14 return for the taxable year filed under this article.

15 (c) *Methods of accounting same as federal.* —

16 (1) *Same as federal.* — A taxpayer's method of  
17 accounting under this article shall be the same as the  
18 taxpayer's method of accounting for federal income  
19 tax purposes. In the absence of any method of account-  
20 ing for federal income tax purposes, the accrual  
21 method of accounting shall be used, unless the tax  
22 commissioner, in writing, consents to the use of  
23 another method. Accrual basis taxpayers may deduct  
24 bad debts only in the year to which they relate, and  
25 accrual basis health care providers may not deduct bad  
26 debts attributable to services rendered before the first  
27 day of June, one thousand nine hundred ninety-three.

28 (2) *Change of accounting methods.* — If a taxpayer's  
29 method of accounting is changed for federal income  
30 tax purposes, the taxpayer's method of accounting for  
31 purposes of this article shall similarly be changed. The  
32 taxpayer shall provide a copy of the authorization for  
33 such change from the Internal Revenue Service with  
34 its annual return for the taxable year filed under this  
35 article.

36 (d) *Adjustments.* — In computing a taxpayer's  
37 liability for tax for any taxable year under a method  
38 of accounting different from the method under which  
39 the taxpayer's liability for tax under this article for  
40 the previous year was computed, there shall be taken  
41 into account those adjustments which are determined,  
42 under regulations prescribed by the tax commissioner,  
43 to be necessary solely by reason of the change in order  
44 to prevent amounts from being duplicated or omitted.

**§11-13A-8. Time for filing annual returns and other documents.**

1 On or before the expiration of one month after the  
2 end of the taxable year, every taxpayer subject to a  
3 tax imposed by this article shall make and file an  
4 annual return for the entire taxable year showing  
5 such information as the tax commissioner may require  
6 and computing the amount of taxes due under this

7 article for the taxable year. Returns made on the basis  
8 of a calendar year shall be filed on or before the  
9 thirty-first day of January following the close of the  
10 calendar year. Returns made on the basis of a fiscal  
11 year shall be filed on or before the last day of the first  
12 month following the close of the fiscal year.

**§11-13A-9. Periodic installment payments of taxes imposed  
by sections three-a, three-b and three-c of  
this article.**

1 (a) *General rule.* — Taxes levied under section  
2 three-a, three-b or three-c of this article shall be due  
3 and payable in periodic installments as follows:

4 (1) If a person's annual tax liability under this  
5 article is reasonably expected to be fifty dollars or less  
6 per month, no installment payments of tax are  
7 required under this section during that taxable year.

8 (2) *Tax of more than one thousand dollars per*  
9 *month.* — For taxpayers whose estimated tax liability  
10 under this article exceeds one thousand dollars per  
11 month, the tax shall be due and payable in monthly  
12 installments on or before the last day of the month  
13 following the month in which the tax accrued: *Provid-*  
14 *ed,* That the installment payment otherwise due under  
15 this subdivision on or before the thirtieth day of June  
16 each year shall be remitted to the tax commissioner on  
17 or before the fifteenth day of June each year, begin-  
18 ning the fifteenth day of June, one thousand nine  
19 hundred eighty-eight:

20 (A) Each such taxpayer shall, on or before the last  
21 day of each month, make out an estimate of the tax for  
22 which the taxpayer is liable for the preceding month,  
23 sign the same and mail it together with a remittance,  
24 in the form prescribed by the tax commissioner, of the  
25 amount of tax due to the office of the tax commission-  
26 er: *Provided,* That the installment payment otherwise  
27 due under this paragraph on or before the thirtieth  
28 day of June each year shall be remitted to the tax  
29 commissioner on or before the fifteenth day of June,  
30 beginning the fifteenth day of June, one thousand  
31 nine hundred eighty-eight.

32 (B) In estimating the amount of tax due for each  
33 month, the taxpayer may deduct one twelfth of any  
34 applicable tax credits allowable for the taxable year,  
35 and one twelfth of any annual exemption allowed for  
36 such year.

37 (3) *Tax of one thousand dollars per month or less.* —  
38 For taxpayers whose estimated tax liability under this  
39 article is one thousand dollars per month or less, the  
40 tax shall be due and payable in quarterly installments  
41 on or before the last day of the month following the  
42 quarter in which the tax accrued:

43 (A) Each such taxpayer shall, on or before the last  
44 day of the fourth, seventh and tenth months of the  
45 taxable year, make out an estimate of the tax for  
46 which the taxpayer is liable for the preceding quarter,  
47 sign the same and mail it together with a remittance,  
48 in the form prescribed by the tax commissioner, of the  
49 amount of tax due to the office of the tax commissioner.

50 (B) In estimating the amount of tax due for each  
51 quarter, the taxpayer may deduct one fourth of any  
52 applicable tax credits allowable for the taxable year,  
53 and one fourth of any annual exemption allowed for  
54 such year.

55 (b) *Exception.* — Notwithstanding the provisions of  
56 subsection (a) of this section, the tax commissioner, if  
57 he deems it necessary to ensure payment of the tax,  
58 may require the return and payment under this  
59 section for periods of shorter duration than those  
60 prescribed in said subsection.

**§11-13A-9a. Periodic installment payments of tax imposed  
by section three of this article.**

1 (a) *General rule.* — Taxes levied under section three  
2 of this article shall be due and payable in periodic  
3 installments as follows:

4 (1) If a person's annual liability under this article  
5 can reasonably be expected to be fifty dollars or less  
6 per month, no installment payments of tax are  
7 required under this section during that taxable year.

8 (2) If a person's annual tax liability under section  
9 three of this article can reasonably be expected to  
10 exceed fifty dollars per month, the tax imposed by said  
11 section shall be due and payable in monthly instal-  
12 lments on or before the last day of the month follow-  
13 ing the month in which the tax accrued: *Provided*,  
14 That the installment payment otherwise due on or  
15 before the thirtieth day of June each year shall be  
16 remitted to the tax commissioner on or before the  
17 fifteenth day of June each year.

18 (A) Each such taxpayer shall, on or before the last  
19 day of each month, make out an estimate of the tax for  
20 which the taxpayer is liable for the preceding month,  
21 sign the same and mail it together with a remittance,  
22 in the form prescribed by the tax commissioner, of the  
23 amount of tax due to the office of the tax commission-  
24 er: *Provided*, That the installment payment otherwise  
25 due under this paragraph on or before the thirtieth  
26 day of June each year shall be remitted to the tax  
27 commissioner on or before the fifteenth day of June,  
28 beginning the fifteenth day of June, one thousand  
29 nine hundred eighty-eight.

30 (B) In estimating the amount of tax due for each  
31 month, the taxpayer may deduct one twelfth of any  
32 applicable tax credits allowable for the taxable year  
33 and one twelfth of any annual exemption allowed for  
34 such year.

35 (b) *Exception.* — Notwithstanding the provisions of  
36 subsection (a) of this section, the tax commissioner, if  
37 he deems it necessary to ensure payment of the tax,  
38 may require the return and payment under this  
39 section for periods of shorter duration than those  
40 prescribed in said subsection.

**§11-13A-10. Paying tax; annual tax credit.**

1 Every taxpayer subject to any tax imposed under  
2 this article shall be allowed one annual credit of five  
3 hundred dollars against the taxes due under this  
4 article, to be applied at the rate of forty-one dollars  
5 and sixty-seven cents per month for each month the  
6 taxpayer was engaged in business in this state during

7 the taxable year exercising a privilege taxable under  
8 this article. Persons providing health care items or  
9 services who become subject to the tax imposed by  
10 section three of this article beginning the first day of  
11 June, one thousand nine hundred ninety-three, shall  
12 be allowed a proportional credit under this section  
13 based on the number of months in their tax year that  
14 begin on or after the first day of June, one thousand  
15 nine hundred ninety-three.

**§11-13A-19. General procedure and administration.**

1 Each and every provision of the "West Virginia Tax  
2 Procedure and Administration Act" set forth in article  
3 ten of this chapter shall apply to the taxes imposed by  
4 this article, except as otherwise expressly provided in  
5 this article, with like effect as if said act were appli-  
6 cable only to the taxes imposed by this article and  
7 were set forth in extenso in this article.

**§11-13A-20. Crimes and penalties.**

1 Each and every provision of the "West Virginia Tax  
2 Crimes and Penalties Act" set forth in article nine of  
3 this chapter shall apply to the taxes imposed by this  
4 article with like effect as if said act were applicable  
5 only to the taxes imposed by this article and were set  
6 forth in extenso in this article.

**§11-13A-20a. Dedication of tax.**

1 (a) The amount of taxes collected under this article  
2 from providers of health care items or services,  
3 including any interest, additions to tax and penalties  
4 collected under article ten of this chapter, less the  
5 amount of allowable refunds and any interest payable  
6 with respect to such refunds, shall be deposited into  
7 the special revenue fund created in the state treasur-  
8 er's office and known as the medicaid state share fund.  
9 Said fund shall have separate accounting for those  
10 health care providers as set forth in articles four-b and  
11 four-c, chapter nine of this code.

12 (b) Notwithstanding the provisions of subsection (a)  
13 of this section, for the remainder of fiscal year one  
14 thousand nine hundred ninety-three and for each



15 succeeding fiscal year, no expenditures from taxes  
16 collected from providers of health care items or  
17 services are authorized except in accordance with  
18 appropriations by the Legislature.

19 (c) The amount of taxes collected under this article  
20 from all other persons, including any interest, addi-  
21 tions to tax and penalties collected under article ten of  
22 this chapter, less the amount of allowable refunds and  
23 any interest payable with respect to such refunds,  
24 shall be deposited into the general revenue fund.

**§11-13A-25. Effective date.**

1 Amendments to this article made by this act of the  
2 Legislature shall take effect the first day of June, one  
3 thousand nine hundred ninety-three.

**ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.**

**§11-26-20. Transition rules; penalties; effective date.**

1 (a) The tax imposed by this article shall not apply to  
2 medicaid reimbursement payments received by health  
3 care providers after the thirty-first day of May, one  
4 thousand nine hundred ninety-three, as amended.

5 (b) All persons subject to the tax imposed by this  
6 article prior to the first day of June, one thousand  
7 nine hundred ninety-three, shall make and file a final  
8 return with the tax commissioner, on or before the  
9 fifteenth day of June, one thousand nine hundred  
10 ninety-three, reporting such information as the tax  
11 commissioner may require. This return shall be in lieu  
12 of the return otherwise due under this article on the  
13 fifteenth day of June, one thousand nine hundred  
14 ninety-three. With this return, the provider shall  
15 remit the balance of tax due under this article with  
16 respect to medicaid services rendered before the said  
17 first day of June.

18 (c) For purposes of subsection (b) of this section, and  
19 notwithstanding any provision of this article to the  
20 contrary, the balance of tax due under this article  
21 shall be the sum of the following components: (1) The  
22 tax due on the state share of medicaid reimbursement

23 payments received by the provider before the said  
24 first day of June and upon which tax was not pre-  
25 viously paid by the provider; and (2) the tax due on  
26 the state share of medicaid reimbursement payments  
27 for services rendered before the said first day of June  
28 that will be received on or after that date either  
29 because the charges for such service were not being  
30 billed to the department of health and human resour-  
31 ces before the said first day of June, or the bill for  
32 such services was not paid by that department before  
33 the said first day of June. Providers who keep their  
34 records on a cash basis for federal income tax purposes  
35 and who are required by this subsection to pay tax on  
36 medicaid reimbursement payments they did not  
37 receive before the said first day of June, may deduct  
38 the amount of such reimbursement payments, when  
39 they are actually received, when determining their tax  
40 liability under article thirteen-a or twenty-seven of  
41 this chapter after said first day of June.

42 (d) Any medicaid tax owed to the tax commissioner  
43 which is not remitted by the fifteenth day of June, one  
44 thousand nine hundred ninety-three, becomes delin-  
45 quent as of the sixteenth day of June, one thousand  
46 nine hundred ninety-three, notwithstanding any  
47 provision of this article or article ten of this chapter to  
48 the contrary.

49 (e) Any person required to pay medicaid tax under  
50 this article who fails to pay the amount due by the  
51 twentieth day of June, one thousand nine hundred  
52 ninety-three, shall be subject to a civil penalty equal  
53 to two hundred percent of the delinquent medicaid tax  
54 owed by such person. Such penalty shall be assessed  
55 and collected as provided in article ten of this chapter.  
56 The amount of penalty collected shall be deposited into  
57 the state share fund established in the treasurer's  
58 office.

59 (f) The provisions of this section shall take effect on  
60 the first day of June, one thousand nine hundred  
61 ninety-three.

**ARTICLE 27. HEALTH CARE PROVIDER TAXES.**

**§11-27-1. Legislative findings.**

1 The Legislature finds and declares that:

2 (a) Medicaid provides access to basic medical care for  
3 our citizens who are not physically, mentally or  
4 economically able to provide for their own care.

5 (b) Inadequate compensation of health care provid-  
6 ers rendering medicaid services is a barrier to indigent  
7 persons obtaining access to health care services.

8 (c) Without adequate compensation for the provision  
9 of medicaid services, this state cannot attract or retain  
10 a sufficient number of health care providers necessary  
11 to serve our indigent population.

12 (d) While participation by a state in the medicaid  
13 program created by Title XIX of the Social Security  
14 Act is voluntary, the reality is that states, and partic-  
15 ularly this state, have no choice but to participate. The  
16 alternative is to deprive indigent citizens and particu-  
17 larly the children of indigent families of basic medical  
18 services.

19 (e) The federal government sets the criteria for  
20 eligibility to obtain medicaid services. The federal  
21 government also requires that certain services be  
22 provided as part of a state's medicaid program.

23 (f) Enactment by the United States Congress in 1991  
24 of Public Law 102-234, amending Section 1903 of the  
25 Social Security Act, places limitations and restrictions  
26 on the flexibility states have to raise state share for its  
27 medical assistance program.

28 (g) The tax enacted in this article is intended to  
29 conform with the requirements of Public Law 102-234.

**§11-27-2. Short title; arrangement and classification.**

1 This article may be cited as the "West Virginia  
2 Health Care Provider Tax Act of 1993". No inference,  
3 implication or presumption of legislative construction  
4 shall be drawn or made by reason of the location or  
5 grouping of any particular section, provision or portion  
6 of this article. No legal effect shall be given to any

7 descriptive matter or heading relating to any part,  
8 section, subdivision or paragraph of this article.

**§11-27-3. Definitions.**

1 (a) *General.* —When used in this article, words  
2 defined in subsection (b) of this section have the  
3 meaning ascribed to them in this section, except in  
4 those instances where a different meaning is distinctly  
5 expressed or the context in which the word is used  
6 clearly indicates that a different meaning is intended.

7 (b) *Definitions.* —

8 (1) “Business” includes all health care activities  
9 engaged in, or caused to be engaged in, with the object  
10 of gain or economic benefit, direct or indirect, and  
11 whether engaged in for profit, or not for profit, or by  
12 a governmental entity: *Provided*, That “business” does  
13 not include services rendered by an employee within  
14 the scope of his or her contract of employment.  
15 Employee services, services by a partner on behalf of  
16 his or her partnership, and services by a member of  
17 any other business entity on behalf of that entity, are  
18 the business of the employer, or partnership, or other  
19 business entity, as the case may be, and reportable as  
20 such for purposes of the taxes imposed by this article.

21 (2) “Broad-based health care related tax” means a  
22 broad-based health care related tax as defined in  
23 Section 1903 of the Social Security Act.

24 (3) “Corporation” includes associations, joint-stock  
25 companies and insurance companies. It also includes  
26 governmental entities when and to the extent such  
27 governmental entities engaged in activities taxable  
28 under this article.

29 (4) “Includes” and “including” when used in a  
30 definition contained in this article shall not be deemed  
31 to exclude other things otherwise within the meaning  
32 of the term being defined.

33 (5) “Partner” includes a member in a “partnership”,  
34 as defined in this section.

35 (6) “Partnership” includes a syndicate, group, pool,

36 joint venture or other unincorporated organization  
37 through or by means of which any privilege taxable  
38 under this article is exercised, and which is not within  
39 the meaning of this article a trust or estate or corpo-  
40 ration. It includes a limited liability company when  
41 such company is treated as a partnership for federal  
42 income tax purposes.

43 (7) "Person" means any individual, partnership,  
44 association, company, corporation or other entity  
45 engaging in a privilege taxed under this article.

46 (8) "Social Security Act" means the Social Security  
47 Act of the United States, as amended by Public Law  
48 102-234, and codified in Title 42, Section 1396b of the  
49 United States Code.

50 (9) "Tax" means any tax imposed by this article and,  
51 for purposes of administration and collection of such  
52 tax, includes any interest, additions to tax or penalties  
53 imposed with respect thereto under article ten of this  
54 chapter.

55 (10) "Taxable year" means the calendar year, or the  
56 fiscal year ending during such calendar year, upon the  
57 basis of which the tax imposed by this article is  
58 computed. In the case of a return made under this  
59 article, or regulations of the tax commissioner, for a  
60 fractional part of a year, the term "taxable year"  
61 means the period for which such return is made.

62 (11) "Taxpayer" means any person subject to any  
63 tax imposed by this article.

64 (12) "This code" means the code of West Virginia,  
65 one thousand nine hundred thirty-one, as amended.

66 (13) "This state" means the state of West Virginia.

**§11-27-4. Imposition of tax on ambulatory surgical centers.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing ambulatory surgical center services, there is  
4 hereby levied and shall be collected from every person  
5 rendering such service an annual broad-based health  
6 care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be one and three-  
9 fourths percent of the gross receipts derived by the  
10 taxpayer from furnishing ambulatory surgical center  
11 services in this state.

12 (c) *Definitions.* —

13 (1) “Gross receipts” means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for ambulatory surgical  
16 center services furnished by the provider, including  
17 retroactive adjustments under reimbursement agree-  
18 ments with third-party payors, without any deduction  
19 for any expenses of any kind: *Provided*, That accrual  
20 basis providers shall be allowed to reduce gross  
21 receipts by their contractual allowances, to the  
22 extent such allowances are included therein, and by  
23 bad debts, to the extent the amount of such bad debts  
24 was previously included in gross receipts upon which  
25 the tax imposed by this section was paid.

26 (2) “Contractual allowances” means the difference  
27 between revenue (gross receipts) at established rates  
28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) “Ambulatory surgical center services” means  
31 those services of an ambulatory surgical center as  
32 defined in Section 1832(a)(2)(F)(1) of the Social Securi-  
33 ty Act.

34 (d) *Effective date.* — The tax imposed by this section  
35 shall apply to gross receipts received or receivable by  
36 providers after the thirty-first day of May, one thou-  
37 sand nine hundred ninety-three.

**§11-27-5. Imposition of tax on providers of chiropractic services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing chiropractic services, there is hereby levied  
4 and shall be collected from every person rendering  
5 such service an annual broad-based health care related  
6 tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be one and three-  
9 fourths percent of the gross receipts derived by the  
10 taxpayer from furnishing chiropractic services in this  
11 state.

12 (c) *Definitions.* —

13 (1) “Gross receipts” means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for chiropractic services  
16 furnished by the provider, including retroactive  
17 adjustments under reimbursement agreements with  
18 third-party payors, without any deduction for any  
19 expenses of any kind: *Provided*, That accrual basis  
20 providers shall be allowed to reduce gross receipts by  
21 their contractual allowances, to the extent such  
22 allowances are included therein, and by bad debts, to  
23 the extent the amount of such bad debts was previous-  
24 ly included in gross receipts upon which the tax  
25 imposed by this section was paid.

26 (2) “Contractual allowances” means the difference  
27 between revenue (gross receipts) at established rates  
28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) “Chiropractic services” means those services  
31 furnished in the practice of chiropractic by a person  
32 entitled to practice chiropractic in this state.

33 (d) *Effective date.* — The tax imposed by this section  
34 shall apply to gross receipts received or receivable by  
35 providers after the thirty-first day of May, one thou-  
36 sand nine hundred ninety-three.

**§11-27-6. Imposition of tax on providers of dental services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing dental services, there is hereby levied and  
4 shall be collected from every person rendering such  
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in  
7 subsection (a) of this section shall be one and three-

8 fourths percent of the gross receipts derived by the  
9 taxpayer from furnishing dental services in this state.

10 (c) *Definitions.* —

11 (1) “Gross receipts” means the amount received or  
12 receivable, whether in cash or in kind, from patients,  
13 third-party payors and others for dental services  
14 furnished by the provider, including retroactive  
15 adjustments under reimbursement agreements with  
16 third-party payors, without any deduction for any  
17 expenses of any kind: *Provided*, That accrual basis  
18 providers shall be allowed to reduce gross receipts by  
19 their contractual allowances, to the extent such  
20 allowances are included therein, and by bad debts, to  
21 the extent the amount of such bad debts was previous-  
22 ly included in gross receipts upon which the tax  
23 imposed by this section was paid.

24 (2) “Contractual allowances” means the difference  
25 between revenue (gross receipts) at established rates  
26 and amounts realizable from third-party payors under  
27 contractual agreements.

28 (3) “Dental services” means those services furnished  
29 in the practice of dentistry by a person entitled to  
30 practice dentistry or dental surgery in this state.

31 (d) *Effective date.* — The tax imposed by this section  
32 shall apply to gross receipts received or receivable by  
33 providers after the thirty-first day of May, one thou-  
34 sand nine hundred ninety-three.

**§11-27-7. Imposition of tax on providers of emergency  
ambulance service.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing emergency ambulance service, there is  
4 hereby levied and shall be collected from every person  
5 rendering such service an annual broad-based health  
6 care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be five and one-half  
9 percent of the gross receipts derived by the taxpayer



10 from furnishing emergency ambulance service in this  
11 state.

12 (c) *Definitions.* —

13 (1) “Gross receipts” means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for emergency ambu-  
16 lance service furnished by the provider, including  
17 retroactive adjustments under reimbursement agree-  
18 ments with third-party payors, without any deduction  
19 for any expenses of any kind: *Provided*, That accrual  
20 basis providers shall be allowed to reduce gross  
21 receipts by their contractual allowances, to the extent  
22 such allowances are included therein, and by bad  
23 debts, to the extent the amount of such bad debts was  
24 previously included in gross receipts upon which the  
25 tax imposed by this section was paid.

26 (2) “Contractual allowances” means the difference  
27 between revenue (gross receipts) at established rates  
28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) “Ambulance” means any privately or publicly  
31 owned vehicle or aircraft which is designed, construct-  
32 ed or modified; equipped or maintained; and operated  
33 for the transportation of patients.

34 (4) “Emergency ambulance service” means the  
35 transportation by ambulance, and the emergency  
36 medical services rendered at the site of pickup and en  
37 route, of a patient to or from a place where medical,  
38 hospital or clinical service is normally available.

39 (5) “Emergency medical services” means emergency  
40 medical services as defined in section three, article  
41 four-c, chapter sixteen of this code.

42 (d) *Effective date.* — The tax imposed by this section  
43 shall apply to gross receipts received or receivable by  
44 providers after the thirty-first day of May, one thou-  
45 sand nine hundred ninety-three.

**§11-27-8. Imposition of tax on providers of independent  
laboratory or X-ray services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing independent laboratory or X-ray services,  
4 there is hereby levied and shall be collected from  
5 every person rendering such service an annual broad-  
6 based health care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be five percent of  
9 the gross receipts derived by the taxpayer from  
10 furnishing independent laboratory or X-ray services in  
11 this state.

12 (c) *Definitions.* —

13 (1) “Gross receipts” means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for independent labora-  
16 tory or X-ray services furnished by the provider,  
17 including retroactive adjustments under reimburse-  
18 ment agreements with third-party payors, without any  
19 deduction for any expenses of any kind: *Provided,*  
20 That accrual basis providers shall be allowed to reduce  
21 gross receipts by their contractual allowances, to the  
22 extent such allowances are included therein, and by  
23 bad debts, to the extent the amount of such bad debts  
24 was previously included in gross receipts upon which  
25 the tax imposed by this section was paid.

26 (2) “Contractual allowances” means the difference  
27 between revenue (gross receipts) at established rates  
28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) “Independent laboratory or X-ray services”  
31 means those services provided in a licensed, free  
32 standing laboratory or X-ray facility. It does not  
33 include laboratory or X-ray services provided in a  
34 physician’s office, hospital inpatient department, or  
35 hospital outpatient department.

36 (d) *Effective date.* — The tax imposed by this section  
37 shall apply to gross receipts received or receivable by  
38 providers after the thirty-first day of May, one thou-

39 sand nine hundred ninety-three.

**§11-27-9. Imposition of tax on providers of inpatient hospital services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing inpatient hospital services, there is hereby  
4 levied and shall be collected from every person  
5 rendering such service an annual broad-based health  
6 care related tax: *Provided*, That a hospital which  
7 meets all the requirements of section twenty-one,  
8 article twenty-nine-b, chapter sixteen of this code and  
9 regulations thereunder may change or amend its  
10 schedule of rates to the extent necessary to compen-  
11 sate for the tax in accordance with the following  
12 procedures:

13 (1) The health care cost review authority shall allow  
14 a temporary change in a hospital's rates which may be  
15 effective immediately upon filing and in advance of  
16 review procedures when a hospital files a verified  
17 claim that such temporary rate changes are in the  
18 public interest, and are necessary to prevent insolven-  
19 cy, to maintain accreditation or for emergency repairs  
20 or to relieve undue financial hardship. The verified  
21 claim shall state the facts supporting the hospital's  
22 position, the amount of increase in rates required to  
23 alleviate the situation and shall summarize the overall  
24 effect of the rate increase. The claim shall be verified  
25 by either the chairman of the hospital's governing  
26 body or by the chief executive officer of the hospital.

27 (2) Following receipt of the verified claim for  
28 temporary relief, the health care cost review authority  
29 shall review the claim through its usual procedures  
30 and standards; however, this power of review does not  
31 affect the hospital's ability to place the temporary rate  
32 increase into effect immediately. The review of the  
33 hospital's claim shall be for a permanent rate increase  
34 and the health care cost review authority may include  
35 such other factual information in the review as may  
36 be necessary for a permanent rate increase review. As

37 a result of its findings from the permanent review, the  
38 health care cost review authority may allow the  
39 temporary rate increase to become permanent, to  
40 deny any increase at all, to allow a lesser increase, or  
41 to allow a greater increase.

42 (3) When any change affecting an increase in rates  
43 goes into effect before a final order is entered in the  
44 proceedings, for whatever reasons, where it deems it  
45 necessary and practicable, the health care cost review  
46 authority may order the hospital to keep a detailed  
47 and accurate account of all amounts received by  
48 reason of the increase in rates and the purchasers and  
49 third-party payors from whom such amounts were  
50 received. At the conclusion of any hearing, appeal or  
51 other proceeding, the health care cost review author-  
52 ity may order the hospital to refund with interest to  
53 each affected purchaser and/or third-party payor any  
54 part of the increase in rates that may be held to be  
55 excessive or unreasonable. In the event a refund is not  
56 practicable, the hospital shall, under appropriate terms  
57 and conditions determined by the health care cost  
58 review authority, charge over and amortize by means  
59 of a temporary decrease in rates whatever income is  
60 realized from that portion of the increase in rates  
61 which was subsequently held to be excessive or  
62 unreasonable.

63 (4) The health care cost review authority, upon a  
64 determination that a hospital has overcharged pur-  
65 chasers or charged purchasers at rates not approved  
66 by the health care cost review authority or charged  
67 rates which were subsequently held to be excessive or  
68 unreasonable, may prescribe rebates to purchasers and  
69 third-party payors in effect by the aggregate total of  
70 the overcharge.

71 (5) The rate adjustment provided for in this section  
72 is limited to a single adjustment during the initial year  
73 of the imposition of the tax provided for in this  
74 section.

75 (b) *Rate and measure of tax.* — The tax imposed in

76 subsection (a) of this section shall be two and one-half  
77 percent of the gross receipts derived by the taxpayer  
78 from furnishing inpatient hospital services in this  
79 state.

80 (c) *Definitions.* —

81 (1) “Gross receipts” means the amount received or  
82 receivable, whether in cash or in kind, from patients,  
83 third-party payors and others for inpatient hospital  
84 services furnished by the provider, including retroac-  
85 tive adjustments under reimbursement agreements  
86 with third-party payors, without any deduction for  
87 any expenses of any kind: *Provided*, That accrual basis  
88 providers shall be allowed to reduce gross receipts by  
89 their contractual allowances, to the extent such  
90 allowances are included therein, and by bad debts, to  
91 the extent the amount of such bad debts was previous-  
92 ly included in gross receipts upon which the tax  
93 imposed by this section was paid.

94 (2) “Contractual allowances” means the difference  
95 between revenue (gross receipts) at established rates  
96 and amounts realizable from third-party payors under  
97 contractual agreements.

98 (3) “Inpatient hospital services” means those servi-  
99 ces that are inpatient hospital services for purposes of  
100 Section 1903(w) of the Social Security Act.

101 (d) *Effective date.* — The tax imposed by this section  
102 shall apply to gross receipts received or receivable by  
103 providers after the thirty-first day of May, one thou-  
104 sand nine hundred ninety-three.

**§11-27-10. Imposition of tax on providers of intermediate  
care facility services for the mentally  
retarded.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing intermediate care facility services for the  
4 mentally retarded, there is hereby levied and shall be  
5 collected from every person rendering such service an  
6 annual broad-based health care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be five and one-half  
9 percent of the gross receipts derived by the taxpayer  
10 from furnishing intermediate care facility services in  
11 this state to the mentally retarded.

12 (c) *Definitions.* —

13 (1) “Gross receipts” means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for intermediate care  
16 facility services furnished by the provider, including  
17 retroactive adjustments under reimbursement agree-  
18 ments with third-party payors, without any deduction  
19 for any expenses of any kind: *Provided*, That accrual  
20 basis providers shall be allowed to reduce gross  
21 receipts by their contractual allowances, to the extent  
22 such allowances are included therein, and by bad  
23 debts, to the extent the amount of such bad debts was  
24 previously included in gross receipts upon which the  
25 tax imposed by this section was paid.

26 (2) “Contractual allowances” means the difference  
27 between revenue (gross receipts) at established rates  
28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) “Intermediate care facility services for the  
31 mentally retarded” means those services that are  
32 intermediate care facility services for the mentally  
33 retarded for purposes of Section 1903(w) of the Social  
34 Security Act.

35 (d) *Effective date.* — The tax imposed by this section  
36 shall apply to gross receipts received or receivable by  
37 providers after the thirty-first day of May, one thou-  
38 sand nine hundred ninety-three.

**§11-27-11. Imposition of tax on providers of nursing facility  
services, other than services of intermediate  
care facilities for the mentally retarded.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing nursing facility services, other than those  
4 services of intermediate care facilities for the mentally

5 retarded, there is hereby levied and shall be collected  
6 from every person rendering such service an annual  
7 broad-based health care related tax: *Provided*, That  
8 hospitals which provide nursing facility services may  
9 adjust nursing facility rates to the extent necessary to  
10 compensate for the tax without first obtaining appro-  
11 val from the health care cost review authority: *Provid-*  
12 *ed, however*, That the rate adjustment is limited to a  
13 single adjustment during the initial year of the  
14 imposition of the tax which adjustment shall be  
15 exempt from prospective review by the health care  
16 cost review authority and further which is limited to  
17 an amount not to exceed the amount of the tax which  
18 is levied against the hospital for the provision of  
19 nursing facility services pursuant to this section. The  
20 health care cost review authority shall retroactively  
21 review the rate increases implemented by the hospi-  
22 tals under this section during the regular rate review  
23 process. A hospital which fails to meet the criteria  
24 established by this section for a rate increase exempt  
25 from prospective review shall be subject to the  
26 penalties imposed under article twenty-nine-b, chapter  
27 sixteen of the code.

28 (b) *Rate and measure of tax.* — The tax imposed in  
29 subsection (a) of this section shall be five and one-half  
30 percent of the gross receipts derived by the taxpayer  
31 from furnishing nursing facility services in this state,  
32 other than services of intermediate care facilities for  
33 the mentally retarded.

34 (c) *Definitions.* —

35 (1) "Gross receipts" means the amount received or  
36 receivable, whether in cash or in kind, from patients,  
37 third-party payors and others for nursing facility  
38 services furnished by the provider, including retroac-  
39 tive adjustments under reimbursement agreements  
40 with third-party payors, without any deduction for  
41 any expenses of any kind: *Provided*, That accrual basis  
42 providers shall be allowed to reduce gross receipts by  
43 their bad debts, to the extent the amount of such bad  
44 debts was previously included in gross receipts upon  
45 which the tax imposed by this section was paid.

46 (2) "Nursing facility services" means those services  
47 that are nursing facility services for purposes of  
48 Section 1903(w) of the Social Security Act.

49 (d) *Effective date.* — The tax imposed by this section  
50 shall apply to gross receipts received or receivable by  
51 providers after the thirty-first day of May, one thou-  
52 sand nine hundred ninety-three.

**§11-27-12. Imposition of tax on providers of nursing services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing nursing services, there is hereby levied and  
4 shall be collected from every person rendering such  
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in  
7 subsection (a) of this section shall be one and three-  
8 fourths percent of the gross receipts derived by the  
9 taxpayer from furnishing nursing services in this  
10 state.

11 (c) *Definitions.* —

12 (1) "Gross receipts" means the amount received or  
13 receivable, whether in cash or in kind, from patients,  
14 third-party payors and others for nursing services  
15 furnished by the provider, including retroactive  
16 adjustments under reimbursement agreements with  
17 third-party payors, without any deduction for any  
18 expenses of any kind: *Provided*, That accrual basis  
19 providers shall be allowed to reduce gross receipts by  
20 their contractual allowances, to the extent such  
21 allowances are included therein, and by bad debts, to  
22 the extent the amount of such bad debts was previous-  
23 ly included in gross receipts upon which the tax  
24 imposed by this section was paid.

25 (2) "Contractual allowances" means the difference  
26 between revenue (gross receipts) at established rates  
27 and amounts realizable from third-party payors under  
28 contractual agreements.

29 (3) "Nursing services" means all nursing acts per-  
30 formed by a registered or practical nurse entitled to



31 provide nursing services in this state, including  
32 services of nurse-midwives, nurse practitioners and  
33 private duty nurses.

34 (d) *Effective date.* — The tax imposed by this section  
35 shall apply to gross receipts received or receivable by  
36 providers after the thirty-first day of May, one thou-  
37 sand nine hundred ninety-three.

**§11-27-13. Imposition of tax on providers of opticians' services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing opticians' services, there is hereby levied  
4 and shall be collected from every person rendering  
5 such service an annual broad-based health care related  
6 tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be one and three-  
9 fourths percent of the gross receipts derived by the  
10 taxpayer from furnishing opticians' services in this  
11 state.

12 (c) *Definitions.* —

13 (1) "Gross receipts" means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for opticians' services  
16 furnished by the provider, including retroactive  
17 adjustments under reimbursement agreements with  
18 third-party payors, without any deduction for any  
19 expenses of any kind: *Provided,* That accrual basis  
20 providers shall be allowed to reduce gross receipts by  
21 their contractual allowances, to the extent such  
22 allowances are included therein, and by bad debts, to  
23 the extent the amount of such bad debts was previous-  
24 ly included in gross receipts upon which the tax  
25 imposed by this section was paid.

26 (2) "Contractual allowances" means the difference  
27 between revenue (gross receipts) at established rates  
28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) "Optician" means a maker or dealer in optical  
31 items or instruments; or a person who grinds and  
32 dispenses prescription spectacle lenses but who is not  
33 an ophthalmologist or an optometrist.

34 (4) "Opticians' services" means those services  
35 furnished by a person trained and engaged in business  
36 as an optician in this state.

37 (d) *Effective date.* — The tax imposed by this section  
38 shall apply to gross receipts received or receivable by  
39 providers after the thirty-first day of May, one thou-  
40 sand nine hundred ninety-three.

**§11-27-14. Imposition of tax on providers of optometric services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing optometric services, there is hereby levied  
4 and shall be collected from every person rendering  
5 such service an annual broad-based health care related  
6 tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be one and three-  
9 fourths percent of the gross receipts derived by the  
10 taxpayer from furnishing optometric services in this  
11 state.

12 (c) *Definitions.* —

13 (1) "Gross receipts" means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for optometric services  
16 furnished by the provider, including retroactive  
17 adjustments under reimbursement agreements with  
18 third-party payors, without any deduction for any  
19 expenses of any kind: *Provided*, That accrual basis  
20 providers shall be allowed to reduce gross receipts by  
21 their contractual allowances, to the extent such  
22 allowances are included therein, and by bad debts, to  
23 the extent the amount of such bad debts was previous-  
24 ly included in gross receipts upon which the tax  
25 imposed by this section was paid.

26 (2) "Contractual allowances" means the difference  
27 between revenue (gross receipts) at established rates  
28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) "Optometric services" means those services  
31 furnished in the practice of optometry by a person  
32 entitled to practice optometry in this state.

33 (d) *Effective date.* — The tax imposed by this section  
34 shall apply to gross receipts received or receivable by  
35 providers after the thirty-first day of May, one thou-  
36 sand nine hundred ninety-three.

**§11-27-15. Imposition of tax on providers of outpatient  
hospital services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing outpatient hospital services, there is hereby  
4 levied and shall be collected from every person  
5 rendering such service an annual broad-based health  
6 care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be two and one-half  
9 percent of the gross receipts derived by the taxpayer  
10 from furnishing outpatient hospital services in this  
11 state.

12 (c) *Definitions.* —

13 (1) "Gross receipts" means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for outpatient hospital  
16 services furnished by the provider, including retroac-  
17 tive adjustments under reimbursement agreements  
18 with third-party payors, without any deduction for  
19 any expenses of any kind: *Provided*, That accrual basis  
20 providers shall be allowed to reduce gross receipts by  
21 their contractual allowances, to the extent such  
22 allowances are included therein, and by bad debts, to  
23 the extent the amount of such bad debts was previous-  
24 ly included in gross receipts upon which the tax  
25 imposed by this section was paid.

26 (2) "Contractual allowances" means the difference  
27 between revenue (gross receipts) at established rates  
28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) "Outpatient hospital services" means those  
31 services that are outpatient hospital services for  
32 purposes of Section 1903(w) of the Social Security Act.

33 (d) *Effective date.* — The tax imposed by this section  
34 shall apply to gross receipts received or receivable by  
35 providers after the thirty-first day of May, one thou-  
36 sand nine hundred ninety-three.

**§11-27-16. Imposition of tax on providers of physicians' services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing physicians' services, there is hereby levied  
4 and shall be collected from every person rendering  
5 such service an annual broad-based health care related  
6 tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be two percent of  
9 the gross receipts derived by the taxpayer from  
10 furnishing physicians' services in this state.

11 (c) *Definitions.* —

12 (1) "Gross receipts" means the amount received or  
13 receivable, whether in cash or in kind, from patients,  
14 third-party payors and others for physicians' services  
15 furnished by the provider, including retroactive  
16 adjustments under reimbursement agreements with  
17 third-party payors, without any deduction for any  
18 expenses of any kind: *Provided*, That accrual basis  
19 providers shall be allowed to reduce gross receipts by  
20 their contractual allowances, to the extent such  
21 allowances are included therein, and by bad debts, to  
22 the extent the amount of such bad debts was previous-  
23 ly included in gross receipts upon which the tax  
24 imposed by this section was paid.

25 (2) "Contractual allowances" means the difference

26 between revenue (gross receipts) at established rates  
27 and amounts realizable from third-party payors under  
28 contractual agreements.

29 (3) "Physicians' services" means those services that  
30 are physicians' services for purposes of Section 1903(w)  
31 of the Social Security Act.

32 (d) *Effective date.* — The tax imposed by this section  
33 shall apply to gross receipts received or receivable by  
34 providers after the thirty-first day of May, one thou-  
35 sand nine hundred ninety-three.

**§11-27-17. Imposition of tax on providers of podiatry services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing podiatry services, there is hereby levied and  
4 shall be collected from every person rendering such  
5 service an annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in  
7 subsection (a) of this section shall be one and three-  
8 fourths percent of the gross receipts derived by the  
9 taxpayer from furnishing podiatry services in this  
10 state.

11 (c) *Definitions.* —

12 (1) "Gross receipts" means the amount received or  
13 receivable, whether in cash or in kind, from patients,  
14 third-party payors and others for podiatry services  
15 furnished by the provider, including retroactive  
16 adjustments under reimbursement agreements with  
17 third-party payors, without any deduction for any  
18 expenses of any kind: *Provided*, That accrual basis  
19 providers shall be allowed to reduce gross receipts by  
20 their contractual allowances, to the extent such  
21 allowances are included therein, and by bad debts, to  
22 the extent the amount of such bad debts was previous-  
23 ly included in gross receipts upon which the tax  
24 imposed by this section was paid.

25 (2) "Contractual allowances" means the difference  
26 between revenue (gross receipts) at established rates

27 and amounts realizable from third-party payors under  
28 contractual agreements.

29 (3) "Podiatry services" means those services fur-  
30 nished in the practice of podiatry by a person entitled  
31 to practice podiatry in this state.

32 (d) *Effective date.* — The tax imposed by this section  
33 shall apply to gross receipts received or receivable by  
34 providers after the thirty-first day of May, one thou-  
35 sand nine hundred ninety-three.

**§11-27-18. Imposition of tax on providers of psychological services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing psychological services, there is hereby levied  
4 and shall be collected from every person rendering  
5 such service an annual broad-based health care related  
6 tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be one and three-  
9 fourths percent of the gross receipts derived by the  
10 taxpayer from furnishing psychological services in this  
11 state.

12 (c) *Definitions.* —

13 (1) "Gross receipts" means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for psychological servi-  
16 ces furnished by the provider, including retroactive  
17 adjustments under reimbursement agreements with  
18 third-party payors, without any deduction for any  
19 expenses of any kind: *Provided*, That accrual basis  
20 providers shall be allowed to reduce gross receipts by  
21 their contractual allowances, to the extent such  
22 allowances are included therein, and by bad debts, to  
23 the extent the amount of such bad debts was previous-  
24 ly included in gross receipts upon which the tax  
25 imposed by this section was paid.

26 (2) "Contractual allowances" means the difference  
27 between revenue (gross receipts) at established rates

28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) "Psychological services" means those services  
31 furnished in the practice of psychology by a person  
32 entitled to practice psychology in this state.

33 (d) *Effective date.* — The tax imposed by this section  
34 shall apply to gross receipts received or receivable by  
35 providers after the thirty-first day of May, one thou-  
36 sand nine hundred ninety-three.

**§11-27-19. Imposition of tax on providers of therapists'  
services.**

1 (a) *Imposition of tax.* — For the privilege of engag-  
2 ing or continuing within this state in the business of  
3 providing therapists' services, there is hereby levied  
4 and shall be collected from every person rendering  
5 such service an annual broad-based health care related  
6 tax.

7 (b) *Rate and measure of tax.* — The tax imposed in  
8 subsection (a) of this section shall be one and three-  
9 fourths percent of the gross receipts derived by the  
10 taxpayer from furnishing therapy services in this  
11 state.

12 (c) *Definitions.* —

13 (1) "Gross receipts" means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for therapy services  
16 furnished by the provider, including retroactive  
17 adjustments under reimbursement agreements with  
18 third-party payors, without any deduction for any  
19 expenses of any kind: *Provided,* That accrual basis  
20 providers shall be allowed to reduce gross receipts by  
21 their contractual allowances, to the extent such  
22 allowances are included therein, and by bad debts, to  
23 the extent the amount of such bad debts was previous-  
24 ly included in gross receipts upon which the tax  
25 imposed by this section was paid.

26 (2) "Contractual allowances" means the difference  
27 between revenue (gross receipts) at established rates

28 and amounts realizable from third-party payors under  
29 contractual agreements.

30 (3) "Therapy services" includes physical therapy,  
31 speech therapy, occupational therapy, respiratory  
32 therapy, audiological services and rehabilitative spe-  
33 cialist furnished by a person trained to furnish such  
34 therapy and, where a license to practice is required by  
35 law, such person is entitled to practice such therapy in  
36 this state.

37 (d) *Effective date.* — The tax imposed by this section  
38 shall apply to gross receipts received or receivable by  
39 providers after the thirty-first day of May, one thou-  
40 sand nine hundred ninety-three.

**§11-27-20. Double taxation prohibited.**

1 (a) No health care provider shall be required to  
2 report gross receipts derived from furnishing a health  
3 care item or service under more than one section of  
4 this article which imposes a tax.

5 (b) Gross receipts derived from furnishing a health  
6 care item or service to a patient shall be taxed only  
7 one time under this article.

**§11-27-21. Apportionment of gross receipts.**

1 When a service is rendered partially in this state and  
2 partially in another state, gross receipts attributable to  
3 such service shall be allocated or apportioned in  
4 accordance with uniform rules promulgated by the tax  
5 commissioner.

**§11-27-22. Accounting periods and methods of accounting.**

1 (a) *General rule.* — For purposes of the tax imposed  
2 by this article, a taxpayer's taxable year shall be the  
3 same as taxpayer's taxable year for federal income tax  
4 purposes. If taxpayer has no taxable year for federal  
5 income tax purposes, then the calendar year shall be  
6 taxpayer's taxable year under this article.

7 (b) *Change of taxable year.* — If a taxpayer's taxable  
8 year is changed for federal income tax purposes,  
9 taxpayer's taxable year for purposes of this article



10 shall be similarly changed. The taxpayer shall be  
11 provided a copy of the authorization from the Internal  
12 Revenue Service for such change with taxpayer's  
13 annual return for the taxable year filed under this  
14 article.

15 (c) *Method of accounting.* — A taxpayer's method of  
16 accounting under this article shall be the same as  
17 taxpayer's method of accounting for federal income  
18 tax purposes. Accrual basis taxpayers may deduct bad  
19 debts only in the year to which they relate.

20 (d) *Change of accounting methods.* — If a taxpayer's  
21 method of accounting is changed for federal income  
22 tax purposes, the taxpayer's method of accounting for  
23 purposes of this article shall similarly be changed. The  
24 taxpayer shall provide a copy of the authorization for  
25 such change from the Internal Revenue Service with  
26 its annual return for the taxable year filed under this  
27 article.

28 (e) *Adjustments.* — In computing a taxpayer's  
29 liability for tax for any taxable year under a method  
30 of accounting different from the method under which  
31 the taxpayer's liability for tax under this article for  
32 the previous year was computed, there shall be taken  
33 into account those adjustments which are determined,  
34 under regulations prescribed by the tax commissioner,  
35 to be necessary solely by reason of the change in order  
36 to prevent amounts from being duplicated or omitted.

**§11-27-23. Time for filing returns and other documents.**

1 (a) *Annual return.* — Every person subject to a tax  
2 imposed by this article shall file an annual return with  
3 the tax commissioner. Returns made on the basis of a  
4 calendar year shall be filed on or before the thirty-  
5 first day of January following the close of the calendar  
6 year. Returns made on the basis of a fiscal year shall  
7 be filed on or before the last day of the first month  
8 following the close of the fiscal year.

9 (b) *Extension of time for filing return.* — The tax  
10 commissioner may, upon written request received on  
11 or before the due date of the annual return or other

12 document, grant a reasonable extension of time for  
13 filing any return, declaration or statement, or other  
14 document required to be filed by this article or by  
15 regulations, upon such terms as the commissioner may  
16 by rule prescribe, or by contract require, if good cause  
17 satisfactory to the tax commissioner is provided by the  
18 taxpayer. No such extension shall be for more than six  
19 months.

**§11-27-24. Payment of estimated tax.**

1 (a) *General rule.* — Every person subject to a tax  
2 imposed by this article must make estimated tax  
3 payments for a taxable year in which such person's  
4 tax liability can reasonably be expected to exceed fifty  
5 dollars per month. Eleven twelfths of such person's  
6 estimated tax liability must be remitted in monthly  
7 installment payments during that tax year. Install-  
8 ment payments are due on the fifteenth day of the  
9 second through the twelfth months of the tax year for  
10 gross receipts received or receivable during the  
11 preceding month. The balance of tax due must be paid  
12 by the last day of the first month following the close  
13 of taxpayer's tax year.

14 (b) *Remittance form.* — With each installment  
15 payment, taxpayer shall file a remittance form execut-  
16 ed as provided in section sixteen of this article. This  
17 form shall be prescribed by the tax commissioner and  
18 require such information as the commissioner deems  
19 necessary for the efficient administration of this  
20 article.

21 (c) *Exception.* — Notwithstanding the provisions of  
22 subsection (a) of this section, the tax commissioner, if  
23 the commissioner deems it necessary to ensure pay-  
24 ment of the tax, may require the return and payment  
25 under this section for periods of shorter duration than  
26 that required in said subsection.

**§11-27-25. Time for paying tax.**

1 (a) *General rule.* — The person required to make an  
2 annual return under this article shall, without assess-  
3 ment or notice and demand from the tax commission-

4 er, pay such tax at the time and place fixed for filing  
5 the annual return, determined without regard to any  
6 extension of time for filing such return.

7 (b) *Extension of time for paying tax.* — The tax  
8 commissioner may extend the time for payment of the  
9 amount of tax shown, or required to be shown, on any  
10 annual return required by this article (or any periodic  
11 installment payment), for a reasonable period not to  
12 exceed six months from the date fixed by statute for  
13 the payment thereof.

14 (c) *Amount determined as deficiency.* — Under rules  
15 prescribed by the tax commissioner, the commissioner  
16 may extend the time for payment of the amount  
17 determined as a deficiency of the taxes imposed by  
18 this article for a period not to exceed eighteen months  
19 from the due date of the deficiency. In exceptional  
20 cases, a further period of time not to exceed twelve  
21 months may be granted. The tax commissioner may  
22 grant an extension of time under this subsection only  
23 where it is shown to the tax commissioner's satisfac-  
24 tion that payment of a deficiency upon the date fixed  
25 for payment thereof will result in undue hardship to  
26 the taxpayer.

27 (d) *No extension in certain circumstances.* — The tax  
28 commissioner may not grant an extension of time  
29 under this section if the failure to timely pay tax, or  
30 if the deficiency in payment of tax, is due to negli-  
31 gence, to intentional disregard of rules or regulations,  
32 or to fraud.

#### §11-27-26. Place for filing returns and other documents.

1 Tax returns, statements or other documents, or  
2 copies thereof, required by this article or by rules shall  
3 be filed with the tax commissioner by delivery, in  
4 person or by mail, postage prepaid, to the tax commis-  
5 sioner's office in Charleston, West Virginia: *Provided,*  
6 That the tax commissioner may, by rule, prescribe the  
7 place for filing such returns, statements or other  
8 documents, or copies thereof, at one or more other  
9 locations.

**§11-27-27. Signing of returns and other documents.**

1 (a) *General.* — Any return, statement or other  
2 document required to be made under the provisions of  
3 this article shall be signed in accordance with instruc-  
4 tions or regulations prescribed by the tax  
5 commissioner.

6 (b) *Signing of corporation returns.* — The president,  
7 vice president, treasurer, assistant treasurer, chief  
8 accounting officer or any other duly authorized officer  
9 shall sign the return of a corporation. In the case of a  
10 return made for a corporation by a fiduciary, the  
11 fiduciary shall sign the return. The fact that an  
12 individual's name is signed on the return is prima  
13 facie evidence that the individual is authorized to sign  
14 the return on behalf of the corporation.

15 (c) *Signing of partnership returns.* — Any one of the  
16 partners shall sign the return of a partnership. The  
17 fact that a partner's name is signed on the return is  
18 prima facie evidence that that partner is authorized to  
19 sign the return on behalf of the partnership.

20 (d) *Signature presumed authentic.* — The fact that  
21 an individual's name is signed to a return, statement  
22 or other document is prima facie evidence for all  
23 purposes that the return, statement or other document  
24 was actually signed by him or her.

25 (e) *Verification of returns.* — Except as otherwise  
26 provided by the tax commissioner, any return, decla-  
27 ration or other document required to be made under  
28 this article shall contain or be verified by a written  
29 declaration that it is made under the penalties of  
30 perjury.

**§11-27-28. Records.**

1 (a) Every person liable for reporting or paying any  
2 tax under this article shall keep such records, receipts,  
3 invoices and other pertinent papers in such forms as  
4 the tax commissioner may require.

5 (b) Every person liable for reporting or paying any  
6 tax under this article shall keep such records for not

7 less than three years after the annual return required  
8 under this article is filed, unless the tax commissioner,  
9 in writing, authorizes their earlier destruction. An  
10 extension of time for making an assessment shall  
11 automatically extend the time period for keeping the  
12 records for all years subject to audit covered in the  
13 agreement for extension of time.

**§11-27-29. General procedure and administration.**

1 Each and every provision of the “West Virginia Tax  
2 Procedure and Administration Act” set forth in article  
3 ten of this chapter applies to the taxes imposed by this  
4 article, except as otherwise expressly provided in this  
5 article, with like effect as if that act were applicable  
6 only to the taxes imposed by this article and were set  
7 forth in extenso in this article.

**§11-27-30. Exchange of information to facilitate compliance.**

1 Notwithstanding the provisions of section five-d,  
2 article ten of this chapter, or any other provision of  
3 this code to the contrary, the tax commissioner and  
4 the commissioner of the bureau of administration and  
5 finance of the department of health and human  
6 resources, or any successor agency thereto, may, by  
7 written agreement, provide for the exchange of  
8 information from their respective files, data bases, or  
9 audits of health care providers, which the tax commis-  
10 sioner deems relevant to determining provider com-  
11 pliance with the provisions of this article, in a cost  
12 effective and efficient manner. Such agreement may  
13 provide for the sharing, or reimbursement, of costs  
14 incurred by either party to gather or provide informa-  
15 tion under this section.

**§11-27-31. Crimes and penalties.**

1 Each and every provision of the “West Virginia Tax  
2 Crimes and Penalties Act” set forth in article nine of  
3 this chapter applies to the taxes imposed by this article  
4 with like effect as if that act were applicable only to  
5 the taxes imposed by this article and were set forth in  
6 extenso in this article.

**§11-27-32. Dedication of tax.**

1 (a) The amount of taxes collected under this article,  
2 including any interest, additions to tax and penalties  
3 collected under article ten of this chapter, less the  
4 amount of allowable refunds, the amount of any  
5 interest payable with respect to such refunds, and  
6 costs of administration and collection, shall be depos-  
7 ited into the special revenue fund created in the state  
8 treasurer's office and known as the medicaid state  
9 share fund. The tax commissioner shall have separate  
10 accounting for those health care providers as set forth  
11 in articles four-b and four-c, chapter nine of this code,  
12 except that taxes paid by hospitals may be combined  
13 and reported as a single item. The tax commissioner  
14 shall retain from the taxes collected during each fiscal  
15 year the amount of two hundred thousand dollars to  
16 be used for administration and collection of these  
17 taxes.

18 (b) Notwithstanding the provisions of subsection (a)  
19 of this section, for the remainder of fiscal year one  
20 thousand nine hundred ninety-three and for each  
21 succeeding fiscal year, no expenditures from any of  
22 the several health care provider funds are authorized  
23 except in accordance with appropriations by the  
24 Legislature.

**§11-27-33. Abrogation.**

1 This tax abrogates and is of no further force and  
2 effect, without any further action by the Legislature,  
3 upon the earliest of the following dates:

4 (a) The date upon which an act of Congress becomes  
5 effective which prohibits the inclusion of revenue  
6 from these broad-based health care related taxes in  
7 state share when obtaining matching federal dollars:  
8 *Provided, That:* (1) If such act specifies a later date on  
9 which such prohibition takes effect, that later effective  
10 date controls; and (2) if such act prohibits the inclusion  
11 revenue from some but not all of the broad-based  
12 health care related taxes imposed by this article, then  
13 only those sections of this article imposing taxes which  
14 cannot be used to obtain federal matching dollars shall  
15 abrogate on such date, and the remaining tax or taxes

16 shall remain in effect.

17 (b) The date upon which a judgment or order of a  
18 court of competent jurisdiction becomes final prohib-  
19 iting the inclusion of revenue from these broad-based  
20 health care related taxes when determining the  
21 amount of state expenditures that are claimable as  
22 medical assistance for purposes of obtaining federal  
23 matching dollars: *Provided, That:* (1) If such judgment  
24 or order specifies a later date on which the prohibition  
25 takes effect, that later effective date controls; and (2)  
26 if such judgment or order prohibits the inclusion  
27 revenue from some but not all of the broad-based  
28 health care related taxes imposed by this article, then  
29 only those sections of this article imposing taxes which  
30 cannot be used to obtain federal matching dollars shall  
31 abrogate on such date, and the remaining tax or taxes  
32 shall remain in effect.

33 (c) The date upon which any federal administrative  
34 rule or regulation promulgated in conformity with  
35 federal law becomes effective which negates the effect  
36 or purposes of this article: *Provided, That:* (1) If such  
37 rule or regulation specifies a later date on which the  
38 prohibition takes effect, that later effective date  
39 controls; and (2) if such rule or regulation prohibits  
40 the inclusion of revenue from some but not all of the  
41 broad-based health care related taxes imposed by this  
42 article when determining the amount of state expen-  
43 ditures that are claimable as medical assistance for  
44 purposes of obtaining federal matching dollars, then  
45 only those sections of this article imposing taxes which  
46 cannot be used to obtain federal matching dollars shall  
47 abrogate on such date, and the remaining tax or taxes  
48 shall remain in effect.

#### §11-27-34. Severability.

1 If any provision of this article or the application  
2 thereof shall for any reason be adjudged by any court  
3 of competent jurisdiction to be invalid, such judgment  
4 shall not affect, impair or invalidate the remainder of  
5 said article, but shall be confined in its operation to  
6 the provision thereof directly involved in the contro-

7 versy in which such judgment shall have been ren-  
8 dered, and the applicability of such provision to other  
9 persons or circumstances shall not be affected thereby.

**§11-27-35. Effective date.**

1 This act of the Legislature shall take effect upon its  
2 passage in the year one thousand nine hundred  
3 ninety-three: *Provided*, That the taxes imposed by this  
4 article shall not be levied on gross receipts received or  
5 accrued before the first day of June, one thousand  
6 nine hundred ninety-three, and shall be levied on  
7 gross receipts received or accrued on or after that  
8 date.

**CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

**ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.**

**§12-6-9e. Legislative findings; loans for the prompt payment  
of medicaid reimbursements; administration  
of funds; conditions for repayment; creation  
of special account in state treasury.**

1 (a) The Legislature hereby finds and declares that  
2 there is a large amount of investable funds in the  
3 consolidated fund established in subsection (b), section  
4 eight of this article; that loans made under commer-  
5 cially reasonable terms to promptly reimburse persons  
6 who have provided medicaid services to the citizens of  
7 this state and to eradicate the back log of accounts  
8 payable to providers of medicaid services is in the best  
9 interest of this state; and that loans from the consol-  
10 idated fund will assist in financing the need to prompt-  
11 ly reimburse medicaid services providers at the end of  
12 the fiscal year ending the thirtieth day of June, one  
13 thousand nine hundred ninety-three, without in any  
14 way impairing the solvency or financial soundness of  
15 the consolidated fund. The Legislature further specif-  
16 ically finds that in no event may any of the funds  
17 borrowed pursuant to the provisions of this section be  
18 utilized for any purpose other than those specified  
19 within this section. This section is enacted in view of  
20 these findings.

21 (b) On or before the thirty-first day of May, one



22 thousand nine hundred ninety-three, the state board  
23 of investments shall transfer moneys, as a loan, from  
24 the consolidated fund to the special sinking fund  
25 account created in the state treasury by subsection (d)  
26 of this section, in an amount not to exceed thirty  
27 million dollars to meet payments for services rendered  
28 by medicaid providers prior to the first day of June,  
29 one thousand nine hundred ninety-three, and to  
30 reduce the back log in reimbursements that exists in  
31 accounts payable related to that time period. On the  
32 date the loan is transferred to the special sinking fund  
33 created in said subsection, interest shall accrue at the  
34 current interest rate of the fund from which the loan  
35 originated, plus one fourth of one percent and the  
36 current interest rate shall be recalculated daily.

37 (c) Notwithstanding any provision of any prior  
38 enactments of articles four-b and four-c, chapter nine  
39 of this code, repayment of moneys transferred, with  
40 interest, shall be made to the board of investments not  
41 later than the thirtieth day of August, one thousand  
42 nine hundred ninety-three, from the proceeds of the  
43 tax on the state share of medicaid reimbursement  
44 imposed by article twenty-six, chapter eleven of this  
45 code and from any civil penalties imposed pursuant to  
46 section twenty, article twenty-six, chapter eleven of  
47 this code to the full extent necessary to insure repay-  
48 ment of the loan by the due date: *Provided, That,*  
49 immediately following the effective date of this  
50 section, funds from the proceeds of the tax on the state  
51 share of medicaid reimbursement may first be used  
52 for the purpose of maximizing the receipt of federal  
53 matching funds during fiscal year one thousand nine  
54 hundred ninety-three.

55 (d) There is hereby created in the state treasury a  
56 special account, designated the "Medicaid Prompt  
57 Payment Fund", which is a sinking fund for the  
58 deposit, withdrawal and repayment of moneys trans-  
59 ferred pursuant to this section. Management of such  
60 fund shall be a responsibility of the board of  
61 investments.

62 (e) Upon the written request of the governor, the

63 board of investments shall transfer to the medical  
64 services fund created pursuant to section two, article  
65 four, chapter nine of this code, from the funds avail-  
66 able in the medicaid prompt payment fund, those  
67 funds necessary for the timely payment of medicaid  
68 reimbursements and accounts payable in the medicaid  
69 program for services rendered prior to the first day of  
70 June, one thousand nine hundred ninety-three.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.**

#### **§16-1-15a. Hospital services revenue account; health facilities long-range plans.**

1 (a) Subject to the provisions set forth in section two,  
2 article two, chapter twelve of this code, there is  
3 continued in the state treasury a separate account  
4 which shall be designated the "hospital services  
5 revenue account". The secretary of the department of  
6 health and human resources shall deposit promptly  
7 into the account any fees received by a facility owned  
8 and operated by the department of health and human  
9 resources from whatever source including the federal  
10 government, state government or other third-party  
11 payer or personal payment.

12 (b) A five-year health facilities long-range plan shall  
13 be developed by the secretary and shall be adopted as  
14 regulation in accordance with this chapter and chapter  
15 twenty-nine-a of this code. The health facilities long-  
16 range plan shall be updated and revised at least every  
17 two years.

18 (c) The secretary is authorized to expend the mon-  
19 eys deposited in the hospital services revenue account  
20 in accordance with federal laws and regulations and  
21 with the laws of this state as is necessary for the  
22 development of the five-year health facilities long-  
23 range plan and subsequent revisions.

24 The secretary is authorized to expend the moneys  
25 deposited in the hospital services revenue account as  
26 provided for in the health facilities long-range plan at  
27 such times and in such amounts as the secretary

28 determines to be necessary for the purpose of improv-  
29 ing the delivery of health and mental health services  
30 or for the purpose of maintaining or obtaining certifi-  
31 cation at a state health or mental health facility:  
32 *Provided*, That all disproportionate share hospital  
33 funds received into the account shall be transferred by  
34 intergovernmental transfer to the medical services  
35 trust fund created in section two-a, article four-a,  
36 chapter nine of this code, except for funds appropriat-  
37 ed by the Legislature for other purposes within the  
38 annual budget bill: *Provided, however*, That during  
39 any fiscal year in which the secretary anticipates  
40 spending any money from such account, he or she shall  
41 submit to the executive department during the budget  
42 preparation period prior to the Legislature convening,  
43 before that fiscal year for inclusion in the executive  
44 budget document and budget bill, his or her recom-  
45 mended capital investments, recommended priorities  
46 and estimated costs, as well as requests of appropria-  
47 tions for the purpose of improving the delivery of  
48 health and mental health services or for the purpose of  
49 maintaining or obtaining certification at a state health  
50 or mental health facility in such amounts as the  
51 secretary determines to be necessary for the develop-  
52 ment of, and as provided for in, the five-year health  
53 facilities long-range plan and subsequent revisions.

54 The secretary shall make an annual report to the  
55 Legislature on the status of the health services reve-  
56 nue account, including the previous year's expendi-  
57 tures and projected expenditures for the next year.

**ARTICLE 2D. CERTIFICATE OF NEED.**

**§16-2D-5. Powers and duties of state agency.**

1 (a) The state agency is hereby empowered to admin-  
2 ister the certificate of need program as provided by  
3 this article.

4 (b) The state agency shall cooperate with the health  
5 care planning commission in developing rules and  
6 regulations for the certificate of need program to the  
7 extent appropriate for the achievement of efficiency in  
8 their reviews and consistency in criteria for such

9 reviews.

10 (c) The state agency may seek advice and assistance  
11 of other persons, organizations and other state agen-  
12 cies in the performance of the state agency's respon-  
13 sibilities under this article.

14 (d) For health services for which competition  
15 appropriately allocates supply consistent with the state  
16 health plan, the state agency shall, in the performance  
17 of its functions under this article, give priority, where  
18 appropriate to advance the purposes of quality assur-  
19 ance, cost effectiveness and access, to actions which  
20 would strengthen the effect of competition on the  
21 supply of such services.

22 (e) For health services for which competition does  
23 not or will not appropriately allocate supply consistent  
24 with the state health plan, the state agency shall, in  
25 the exercise of its functions under this article, take  
26 actions, where appropriate to advance the purposes of  
27 quality assurance, cost effectiveness and access and the  
28 other purposes of this article, to allocate the supply of  
29 such services.

30 (f) Notwithstanding the provisions of section seven  
31 of this article, the state agency may charge a fee for  
32 the filing of any application, the filing of any notice in  
33 lieu of an application, the filing of any exemption  
34 determination request or the filing of any request for  
35 a declaratory ruling. The fees charged may vary  
36 according to the type of matter involved, the type of  
37 health service or facility involved or the amount of  
38 capital expenditure involved. The state agency shall  
39 implement this subsection by filing procedural rules  
40 pursuant to chapter twenty-nine-a of this code. The  
41 fees charged shall be deposited into a special fund  
42 known as the certificate of need program fund to be  
43 expended for the purposes of this article.

44 (g) No hospital, nursing home or other health care  
45 facility shall add any intermediate care or skilled  
46 nursing beds to its current licensed bed complement.  
47 This prohibition also applies to the conversion of acute  
48 care or other types of beds to intermediate care or

49 skilled nursing beds: *Provided*, That hospitals eligible  
50 under the provisions of section four-a and subsection  
51 (i), section five of this article may convert acute care  
52 beds to skilled nursing beds in accordance with the  
53 provisions of these sections, upon approval by the state  
54 agency. Furthermore, no certificate of need shall be  
55 granted for the construction or addition of any inter-  
56 mediate care or skilled nursing beds except in the case  
57 of facilities designed to replace existing beds in unsafe  
58 existing facilities. A health care facility in receipt of a  
59 certificate of need for the construction or addition of  
60 intermediate care or skilled nursing beds which was  
61 approved prior to the effective date of this section  
62 must incur an obligation for a capital expenditure  
63 within twelve months of the date of issuance of the  
64 certificate of need. No extensions shall be granted  
65 beyond the twelve-month period: *Provided, however*,  
66 That a maximum of sixty beds may be approved, as a  
67 demonstration project, by the state agency for a unit  
68 to provide nursing services to patients with alzheimer's  
69 disease if: (1) The unit is located in an existing  
70 facility which was formerly owned and operated by  
71 the state of West Virginia and is presently owned by  
72 a county of the state of West Virginia; (2) the facility  
73 has provided health care services, including personal  
74 care services, within one year prior to the effective  
75 date of this section; (3) the facility demonstrates that  
76 awarding the certificate of need and operating the  
77 facility will be cost effective for the state; and (4) that  
78 any applicable lease, lease-purchase or contract for  
79 operating the facility was awarded through a process  
80 of competitive bidding consistent with state purchasing  
81 practices and procedures: *Provided further*, That an  
82 application for said demonstration project shall be  
83 filed with the state agency on or before the twenty-  
84 first day of October, one thousand nine hundred  
85 ninety-three.

86 (h) No additional intermediate care facility for the  
87 mentally retarded (ICF/MR) beds shall be granted a  
88 certificate of need, except that prohibition does not  
89 apply to ICF/MR beds approved under the Kanawha  
90 County circuit court order of the third day of August,

91 one thousand nine hundred eighty-nine, civil action  
92 number MISC-81-585 issued in the case of E. H. v.  
93 Matin, 168 W.V. 248, 284 S.E.2d 232 (1981).

94 (i) Notwithstanding the provisions of subsection (g),  
95 section five of this article and, further notwithstanding  
96 the provisions of subsection (d), section three of this  
97 article, an existing acute care hospital may apply to  
98 the health care cost review authority for a certificate  
99 of need to convert acute care beds to skilled nursing  
100 beds: *Provided*, That the proposed skilled nursing beds  
101 are medicare certified only: *Provided, however*, That  
102 any hospital which converts acute care beds to medi-  
103 care certified only skilled nursing beds is prohibited  
104 from billing for any medicaid reimbursement for any  
105 beds so converted. In converting beds, the hospital  
106 must convert a minimum of one acute care bed into  
107 one medicare certified only skilled nursing bed. The  
108 health care cost review authority may require a  
109 hospital to convert up to and including three acute  
110 care beds for each medicare certified only skilled  
111 nursing bed. The health care cost review authority  
112 shall adopt rules to implement this subsection which  
113 require that:

114 (1) All acute care beds converted shall be perman-  
115 ently deleted from the hospital's acute care bed  
116 complement and the hospital may not thereafter add,  
117 by conversion or otherwise, acute care beds to its bed  
118 complement without satisfying the requirements of  
119 subsection (d), section three of this article for which  
120 purposes such an addition, whether by conversion or  
121 otherwise, shall be considered a substantial change to  
122 the bed capacity of the hospital notwithstanding the  
123 definition of that term found in subsection (ee), section  
124 two of this article.

125 (2) The hospital shall meet all federal and state  
126 licensing certification and operational requirements  
127 applicable to nursing homes including a requirement  
128 that all skilled care beds created under this subsection  
129 shall be located in distinct-part, long-term care units.

130 (3) The hospital must demonstrate a need for the

131 project.

132 (4) The hospital must use existing space for the  
133 medicare certified only skilled nursing beds. Under no  
134 circumstances shall the hospital construct, lease or  
135 acquire additional space for purposes of this section.

136 (5) The hospital must notify the acute care patient,  
137 prior to discharge, of facilities with skilled nursing  
138 beds which are located in or near the patient's county  
139 of residence.

140 Nothing in this subsection shall negatively affect the  
141 rights of inspection and certification which are other-  
142 wise required by federal law or regulations or by this  
143 code of duly adopted regulations of an authorized state  
144 entity.

145 (j) Notwithstanding the provisions of subsection (g)  
146 of this section, a retirement life care center with no  
147 skilled nursing beds may apply to the health care cost  
148 review authority for a certificate of need for up to  
149 sixty skilled nursing beds provided the proposed  
150 skilled beds are medicare certified only. On a state-  
151 wide basis, a maximum of one hundred eighty skilled  
152 beds which are medicare certified only may be devel-  
153 oped pursuant to this subsection. The state health plan  
154 shall not be applicable to projects submitted under this  
155 subsection. The health care cost review authority shall  
156 adopt rules to implement this subsection which shall  
157 include:

158 (1) A requirement that the one hundred eighty beds  
159 are to be distributed on a statewide basis;

160 (2) There shall be a minimum of twenty beds and a  
161 maximum of sixty beds in each approved unit;

162 (3) The unit developed by the retirement life care  
163 center shall meet all federal and state licensing  
164 certification and operational requirements applicable  
165 to nursing homes;

166 (4) The retirement center must demonstrate a need  
167 for the project;

168 (5) The retirement center must offer personal

169 care, home health services and other lower levels of  
170 care to its residents; and

171 (6) The retirement center must demonstrate both  
172 short and long-term financial feasibility.

173 Nothing in this subsection shall negatively affect the  
174 rights of inspection and certification which are other-  
175 wise required by federal law or regulations or by this  
176 code of duly adopted regulations of an authorized state  
177 entity.

178 (k) The provisions of this article are severable and if  
179 any provision, section or part thereby shall be held  
180 invalid, unconstitutional or inapplicable to any person  
181 or circumstance, such invalidity, unconstitutionality or  
182 inapplicability shall not affect or impair any other  
183 remaining provisions contained herein.





The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*Ernest C. Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Parrell Addines*  
.....  
Clerk of the Senate

*Donald L. Kopp*  
.....  
Clerk of the House of Delegates

*Keith Sundt*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *4<sup>th</sup>* .....  
day of *June* ....., 1993.

*Yaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 6/5/93

Time 11:30 AM