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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



# ENROLLED

## House Bill No. 3009

(By Delegates Beane, Browning and G. White)



Passed April 12, 2001

In Effect Ninety Days from Passage

**FILED**

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**H. B. 3009**

(BY DELEGATES BEANE, BROWNING AND G. WHITE)

[Passed April 12, 2001; in effect ninety days from passage.]

AN ACT to repeal section nine-a, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article three, chapter twenty-nine of said code; to amend and reenact section fifteen, article two, chapter thirty-three of said code; to amend and reenact sections fourteen, fourteen-a, fourteen-c, fourteen-d and thirty-three, article three of said chapter; to amend and reenact section five, article thirty-two of said chapter; and to amend said chapter by adding thereto a new article, designated article forty-three, all relating to the procedures for administering taxes and fees required to be paid or remitted to the commissioner of insurance; the tax on insurers pursuant to the fire prevention and control act; the commissioner's annual report to the governor on the condition of insurers; the filing of annual financial statements and premium tax returns; the computation and payment of taxes to the insurance commissioner; fire and casualty insurance premium tax; the surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments, certain retired teachers and the teachers retirement reserve fund; the premium tax imposed upon risk retention

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groups; the enactment of an insurance tax procedures act; the power of the commissioner to conduct hearings and impose penalties for failure to comply with tax statutes and rules; authority of the commissioner to bring or join suit; the obligation to file tax returns; imposition of penalties for taxpayer's failure to file or pay tax liability; the issuance of tax assessments; the right to hearing and appeal; the procedure for claiming tax refunds and credits; the imposition of interest on unpaid assessments; the allocation of payments; notice of overpayments and underpayments; and retroactive monetary relief for unconstitutional taxes.

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

That section nine-a, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-two, article three, chapter twenty-nine of said code be amended and reenacted; that section fifteen, article two, chapter thirty-three of said code be amended and reenacted; that sections fourteen, fourteen-a, fourteen-c, fourteen-d and thirty-three, article three of said chapter be amended and reenacted; that section five, article thirty-two of said chapter be amended and reenacted; and that said chapter be amended by adding thereto a new article, designated article forty-three, all to read as follows:

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

**§29-3-22. Tax on insurance companies.**

1 Every insurance company doing business in this state,  
2 except farmers' mutual fire insurance companies, shall pay to  
3 the state insurance commissioner annually on or before the first  
4 day of March, in addition to the taxes now required by law to be  
5 paid by the companies, one half of one percent of the taxable  
6 premiums of the companies on insurance against the hazard of  
7 fire and on that portion of all other taxable premiums reason-

8 ably applicable to insurance against the hazard of fire which are  
 9 included in other coverages, and received by it for insurance on  
 10 property or risks in this state during the calendar year next  
 11 preceding as shown by their annual statement under oath to the  
 12 insurance department. The money so received by the state  
 13 insurance commissioner is paid by him or her into the treasury  
 14 and credited to the state general revenue fund.

### CHAPTER 33. INSURANCE.

#### ARTICLE 2. INSURANCE COMMISSIONER.

##### **§33-2-15. Annual report by commissioner.**

1 The commissioner shall annually, on or before the first day  
 2 of November, submit to the governor a report for the previous  
 3 calendar year of his or her official acts, and of the condition of  
 4 insurers doing business in this state, with a condensed statement  
 5 of their reports to him or her, abstracts of all accounts rendered  
 6 to any court by receivers of insolvent insurers, abstracts or  
 7 reports to the commissioner by the receivers, together with a  
 8 statement of all assessments, fees, taxes and related charges  
 9 received from insurers and other licensees and paid by him or  
 10 her into the state treasury.

#### ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

##### **§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.**

1 (a) Every insurer transacting insurance in West Virginia  
 2 shall file with the commissioner, on or before the first day of  
 3 March, each year, a financial statement made under oath of its  
 4 president or secretary and on a form prescribed by the commis-  
 5 sioner. The insurer shall also, on or before the first day of  
 6 March of each year subject to the provisions of section

7 fourteen-c of this article, under the oath of its president or  
8 secretary, make a premium tax return for the previous calendar  
9 year, on a form prescribed by the commissioner showing the  
10 gross amount of direct premiums, whether designated as a  
11 premium or by some other name, collected and received by it  
12 during the previous calendar year on policies covering risks  
13 resident, located or to be performed in this state and compute  
14 the amount of premium tax chargeable to it in accordance with  
15 the provisions of this article, deducting the amount of quarterly  
16 payments as required to be made pursuant to the provisions of  
17 section fourteen-c of this article, if any, less any adjustments to  
18 the gross amount of the direct premiums made during the  
19 calendar year, if any, and transmit with the return to the  
20 commissioner a remittance in full for the tax due. The tax is the  
21 sum equal to two percent of the taxable premium and also  
22 includes any additional tax due under section fourteen-a of this  
23 article.

24 (b) There is created in the state treasury a special revenue  
25 fund, administered by the treasurer, designated the "insurance  
26 tax fund." This fund is not part of the general revenue fund of  
27 the state. It consists of all taxes received by the commissioner  
28 not allocated to another fund, any appropriations to the fund, all  
29 interest earned from investment of the fund and any gifts, grants  
30 or contributions received by the fund.

31 (c) The treasurer shall dedicate and transfer from the  
32 insurance tax fund to the regional jail and correctional facility  
33 investment fund created under the provisions of section twenty-  
34 one, article six, chapter twelve of this code, on or before the  
35 tenth day of each month, an amount equal to one twelfth of the  
36 projected annual investment earnings to be paid and the capital  
37 invested to be returned, as certified to the treasurer by the  
38 investment management board: *Provided*, That the amount  
39 dedicated and transferred may not exceed twenty million dollars  
40 in any fiscal year. In the event there are insufficient funds

41 available in any month to transfer the amount required pursuant  
42 to this subsection to the regional jail and correctional facility  
43 investment fund, the deficiency shall be added to the amount  
44 transferred in the next succeeding month in which revenues are  
45 available to transfer the deficiency. Each month a lien on the  
46 revenues generated from the insurance premium tax, the  
47 annuity tax and the minimum tax, provided in this section and  
48 sections fifteen and seventeen of this article, up to a maximum  
49 amount equal to one twelfth of the projected annual principal  
50 and return is granted to the investment management board to  
51 secure the investment made with the regional jail and correc-  
52 tional facility authority pursuant to section twenty, article six,  
53 chapter twelve of this code. The treasurer shall, no later than the  
54 last business day of each month, transfer amounts the treasurer  
55 determines are not necessary for making refunds under this  
56 article to meet the requirements of subsection (d), section  
57 twenty-one, article six, chapter twelve of this code, to the credit  
58 of the general revenue fund.

59 (d) The amendment to this section enacted during the  
60 regular session of the Legislature in the year one thousand nine  
61 hundred ninety-eight, is effective on the first day of July, one  
62 thousand nine hundred ninety-eight.

**§33-3-14a. Additional premium tax.**

1 For the purpose of providing additional revenue for the  
2 state general revenue fund, there is hereby levied and imposed,  
3 in addition to the taxes imposed by section fourteen of this  
4 article, an additional premium tax equal to one percent of  
5 taxable premiums. Except as otherwise provided in this section,  
6 all provisions of this article relating to the levy, imposition and  
7 collection of the regular premium tax shall be applicable to the  
8 levy, imposition and collection of the additional tax. All  
9 moneys received from the additional tax imposed by this  
10 section, less deductions allowed by this article for refunds and

11 for costs of administration, shall be received by the commis-  
12 sioner and shall be paid by him or her into the state treasury for  
13 the benefit of the state fund.

**§33-3-14c. Computation and payment of tax.**

1 The taxes levied hereunder shall be due and payable in  
2 quarterly installments on or before the twenty-fifth day of the  
3 month succeeding the end of the quarter in which they accrue,  
4 except for the fourth quarter, for which taxes shall be due and  
5 payable on or before the first day of March of the succeeding  
6 year. The insurer subject to making the payments shall, by the  
7 due date, prepare an estimate of the tax based on the estimated  
8 amount of taxable premium during the preceding quarter, and  
9 mail the estimate together with a remittance of the amount of  
10 tax to the office of the commissioner.

**§33-3-14d. Additional fire and casualty insurance premium tax;  
allocation of proceeds; effective date.**

1 (a) For the purpose of providing additional revenue for  
2 municipal policemen's and firemen's pension and relief funds  
3 and the teachers retirement system reserve fund and for  
4 volunteer and part volunteer fire companies and departments,  
5 there is hereby levied and imposed an additional premium tax  
6 equal to one percent of taxable premiums for fire insurance and  
7 casualty insurance policies. For purposes of this section,  
8 casualty insurance does not include insurance on the life of a  
9 debtor pursuant to or in connection with a specific loan or other  
10 credit transaction or insurance on a debtor to provide indemnity  
11 for payments becoming due on a specific loan or other credit  
12 transaction while the debtor is disabled as defined in the policy.

13 All moneys collected from this additional tax shall be  
14 received by the commissioner and paid by him or her into a  
15 special account in the state treasury, designated the municipal  
16 pensions and protection fund. The net proceeds of this tax after

17 appropriation thereof by the Legislature is distributed in  
18 accordance with the provisions of this section.

19 (b)(1) Before the first day of August of each calendar year,  
20 the treasurer of each municipality in which a municipal  
21 policemen's or firemen's pension and relief fund has been  
22 established shall report to the state treasurer the average  
23 monthly number of members who worked at least one hundred  
24 hours per month and the average monthly number of retired  
25 members of municipal policemen's or firemen's pension  
26 systems during the preceding fiscal year.

27 (2) Before the first day of September of each calendar year,  
28 the state treasurer shall allocate and authorize for distribution  
29 the revenues in the municipal pensions and protection fund  
30 which were collected during the preceding calendar year for the  
31 purposes set forth in this section. Sixty-five percent of the  
32 revenues are allocated to municipal policemen's and firemen's  
33 pension and relief funds; twenty-five percent of the revenues  
34 shall be allocated to volunteer and part volunteer fire companies  
35 and departments; and ten percent of such allocated revenues are  
36 allocated to the teachers retirement system reserve fund created  
37 by section eighteen, article seven-a, chapter eighteen of this  
38 code: *Provided*, That in any year the actuarial report required  
39 by section twenty, article twenty-two, chapter eight of this code  
40 indicates no actuarial deficiency in the municipal policemen's  
41 or firemen's pension and relief fund, no revenues may be  
42 allocated from the municipal pensions and protection fund to  
43 that fund. The revenues from the municipal pensions and  
44 protection fund shall then be allocated to all other pension funds  
45 which have an actuarial deficiency.

46 (3) The moneys, and the interest earned thereon, in the  
47 municipal pensions and protection fund allocated to volunteer  
48 and part volunteer fire companies and departments shall be  
49 allocated and distributed quarterly to the volunteer fire compa-



50 nies and departments. Before each distribution date, the state  
51 fire marshal shall report to the state treasurer the names and  
52 addresses of all volunteer and part volunteer fire companies and  
53 departments within the state which meet the eligibility require-  
54 ments established in section eight-a, article fifteen, chapter  
55 eight of this code.

56 (c) (1) Each municipal pension and relief fund shall have  
57 allocated and authorized for distribution a pro rata share of the  
58 revenues allocated to municipal policemen's and firemen's  
59 pension and relief funds based upon the corresponding munic-  
60 ipality's average monthly number of members who worked at  
61 least one hundred hours per month during the preceding fiscal  
62 year. On and after the first day of July, one thousand nine  
63 hundred ninety-seven, from the growth in any moneys collected  
64 pursuant to the tax imposed by this section there shall be  
65 allocated and authorized for distribution to each municipal  
66 pension and relief fund, a pro rata share of the revenues  
67 allocated to municipal policemen's and firemen's pension and  
68 relief funds based upon the corresponding municipalities  
69 average number of members who worked at least one hundred  
70 hours per month and average monthly number of retired  
71 members. For the purposes of this subsection, the growth in  
72 moneys collected from the tax collected pursuant to this section  
73 is determined by subtracting the amount of the tax collected  
74 during the fiscal year ending the thirtieth day of June, one  
75 thousand nine hundred ninety-six, from the tax collected during  
76 the fiscal year for which the allocation is being made. All  
77 moneys received by municipal pension and relief funds under  
78 this section may be expended only for those purposes described  
79 in sections sixteen through twenty-eight, inclusive, article  
80 twenty-two, chapter eight of this code.

81 (2) Each volunteer fire company or department shall  
82 receive an equal share of the revenues allocated for volunteer  
83 and part volunteer fire companies and departments.

84 (3) In addition to the share allocated and distributed in  
85 accordance with subdivision (1) of this subsection, each  
86 municipal fire department composed of full-time paid members  
87 and volunteers and part volunteer fire companies and depart-  
88 ments shall receive a share equal to the share distributed to  
89 volunteer fire companies under subdivision (2) of this subsec-  
90 tion reduced by an amount equal to the share multiplied by the  
91 ratio of the number of full-time paid fire department members  
92 who are also members of a municipal firemen's pension system  
93 to the total number of members of the fire department.

94 (d) The allocation and distribution of revenues provided for  
95 in this section are subject to the provisions of section twenty,  
96 article twenty-two, and sections eight-a and eight-b, article  
97 fifteen, chapter eight of this code.

**§33-3-33. Surcharge on fire and casualty insurance policies to  
benefit volunteer and part volunteer fire depart-  
ments; special fund created; allocation of proceeds;  
effective date.**

1 (a) For the purpose of providing additional revenue for  
2 volunteer fire departments, part-volunteer fire departments,  
3 certain retired teachers and the teachers retirement reserve fund,  
4 there is hereby authorized and imposed on and after the first  
5 day of July, one thousand nine hundred ninety-two, on the  
6 policyholder of any fire insurance policy or casualty insurance  
7 policy issued by any insurer, authorized or unauthorized, or by  
8 any risk retention group, a policy surcharge equal to one  
9 percent of the taxable premium for each such policy. For  
10 purposes of this section, casualty insurance may not include  
11 insurance on the life of a debtor pursuant to or in connection  
12 with a specific loan or other credit transaction or insurance on  
13 a debtor to provide indemnity for payments becoming due on a  
14 specific loan or other credit transaction while the debtor is  
15 disabled as defined in the policy. The policy surcharge may not

16 be subject to premium taxes, agent commissions or any other  
17 assessment against premiums.

18 (b) The policy surcharge shall be collected and remitted to  
19 the commissioner by the insurer or in the case of excess lines  
20 coverage, by the resident excess lines broker, or if the policy is  
21 issued by a risk retention group, by the risk retention group.  
22 The amount required to be collected under this section shall be  
23 remitted to the commissioner on a quarterly basis on or before  
24 the twenty-fifth day of the month succeeding the end of the  
25 quarter in which they are collected, except for the fourth quarter  
26 for which the surcharge shall be remitted on or before the first  
27 day of March of the succeeding year.

28 (c) Any person failing or refusing to collect and remit to the  
29 commissioner any policy surcharge and whose surcharge  
30 payments are not postmarked by the due dates for quarterly  
31 filing is liable for a civil penalty of up to one hundred dollars  
32 for each day of delinquency, to be assessed by the commis-  
33 sioner. The commissioner may suspend the insurer, broker or  
34 risk retention group until all surcharge payments and penalties  
35 are remitted in full to the commissioner.

36 (d) One half of all money from the policy surcharge shall  
37 be collected by the commissioner who shall disburse the money  
38 received from the surcharge into a special account in the state  
39 treasury, designated the "fire protection fund." The net proceeds  
40 of this portion of the tax, and the interest thereon after appropri-  
41 ation by the Legislature shall be distributed quarterly on the  
42 first day of the months of January, April, July and October to  
43 each volunteer fire company or department on an equal share  
44 basis by the state treasurer.

45 (1) Before each distribution date, the state fire marshal shall  
46 report to the state treasurer the names and addresses of all  
47 volunteer and part volunteer fire companies and departments

48 within the state which meet the eligibility requirements  
49 established in section eight-a, article fifteen, chapter eight of  
50 this code.

51 (2) The remaining fifty percent of the moneys collected  
52 shall be transferred to the teachers retirement system to be  
53 disbursed according to the provisions of sections twenty-six-j,  
54 twenty-six-k and twenty-six-l, article seven-a, chapter eighteen  
55 of this code. Any balance remaining after the disbursements  
56 authorized by this subdivision have been paid shall be paid by  
57 the teachers retirement system into the teachers retirement  
58 system reserve fund.

59 (e) The allocation, distribution and use of revenues pro-  
60 vided in the fire protection fund are subject to the provisions of  
61 sections eight-a and eight-b, article fifteen, chapter eight of this  
62 code.

#### ARTICLE 32. RISK RETENTION ACT.

##### **§33-32-5. Tax on premiums collected.**

1 (a) Each risk retention group shall pay to the commissioner,  
2 on the first day of March of each year, a tax at the rate of two  
3 percent of the taxable premiums on policies or contracts of  
4 insurance covering property or risks in this state and on risk and  
5 property situated elsewhere upon which no premium tax is  
6 otherwise paid during the previous year. Each risk retention  
7 group shall also be subject to the additional premium taxes  
8 levied by sections fourteen-a and fourteen-d of article three of  
9 this chapter and the examination assessment fee levied by  
10 section nine of article two of this chapter.

11 (b) The taxes provided for in this section shall constitute all  
12 taxes collectible under the laws of this state from any risk  
13 retention group, and no other premium tax or other taxes shall  
14 be levied or collected from any risk retention group by the state

15 or any county, city or municipality within this state, except ad  
16 valorem taxes. Each risk retention group shall be subject to the  
17 same interests, additions, fines and penalties for nonpayment as  
18 are generally applicable to insurers.

19 (c) To the extent that a risk retention group utilizes insur-  
20 ance agents, each agent shall keep a complete and separate  
21 record of all policies procured from each risk retention group,  
22 which record shall be open to examination by the commis-  
23 sioner, as provided in section nine, article two of this chapter.  
24 These records shall, for each policy and each kind of insurance  
25 provided thereunder, include the following:

26 (1) The limit of liability;

27 (2) The time period covered;

28 (3) The effective date;

29 (4) The name of the risk retention group which issued the  
30 policy;

31 (5) The gross premium charged; and

32 (6) The amount of return premiums, if any.

**ARTICLE 43. INSURANCE TAX PROCEDURES ACT.**

**§33-43-1. Short title.**

1 This article shall be known and may be referred to as the  
2 “Insurance Tax Procedures Act.”

**§33-43-2. Application.**

1 (a) The provisions of this article applies to all taxes,  
2 surcharges, assessments, penalties and fees, however denomi-  
3 nated, which are remitted to the commissioner.

4 (b) This article supersedes any provisions in this code  
5 which concern the matters addressed in this article, but only to  
6 the extent that those other provisions are inconsistent with this  
7 article.

### §33-43-3. Definitions.

1 For the purposes of this article and where not otherwise  
2 defined in this chapter:

3 (a) "Assessment" means a written notice by the commis-  
4 sioner of an amount due by a taxpayer for payment of any tax,  
5 fee, penalty or related charge administered under this article.

6 (b) "Days" means calendar days.

7 (c) "Filing date" for a return means the date prescribed by  
8 the Legislature for the filing of a return, or if no date is pre-  
9 scribed, the payment date for the tax which is the subject of the  
10 return.

11 (d) "Final decision" means a decision for which the  
12 availability of an appeal has been exhausted, either because the  
13 time for filing a petition has elapsed or because the petition has  
14 been denied.

15 (e) "Payment date" for a tax means the date prescribed by  
16 the Legislature for the payment of the tax, or if no date is  
17 prescribed, on the first day of March next following the end of  
18 the taxable year for the tax.

19 (f) "Related charges" includes fees, and additions and  
20 interest called for by this article.

21 (g) "Surcharge" means a tax payable by a policyholder but  
22 collected and remitted to the commissioner by the insurer.

23 (h) "Tax" means any tax to which this article applies.

24 (i) "Taxable premium" means the amount of the gross  
25 direct premiums, annuity considerations or dividends on  
26 participating policies applied in reduction of premiums less  
27 premiums returned to policyholders due to cancellation of  
28 policies.

29 (j) "Taxpayer" includes any legal entity which is liable for  
30 the remittance of a tax to the commissioner in a particular  
31 taxable year, and any legal entity that is required to file a return  
32 under this article.

**§33-43-4. Powers of the commissioner.**

1 (a) All powers granted to the commissioner by this article  
2 are in addition to those powers granted to the commissioner  
3 elsewhere in this code, and no provision of this article may be  
4 construed to eliminate or diminish the other powers.

5 (b) The commissioner may prescribe any forms as he or she  
6 considers necessary for the fair, uniform and efficient adminis-  
7 tration of taxes. All forms now used by the commissioner shall  
8 be prescribed until the commissioner requires otherwise.

9 (c) The commissioner may propose rules for legislation  
10 approval in accordance with the provisions of article three,  
11 chapter twenty-nine-a of this code which he or she considers  
12 necessary for the fair, uniform and efficient administration of  
13 taxes. All currently existing rules remain in effect until  
14 amended or repealed.

15 (d) For the purpose of ascertaining the application of this  
16 article to a taxpayer, the commissioner may:

17 (1) Examine any books, papers, records, memoranda or  
18 property of the taxpayer, legal entity, or any other person which  
19 may be relevant in determining its tax liability, compliance or  
20 taxpayer status;

21 (2) Require the attendance for the purpose of giving  
22 testimony of the taxpayer or legal entity, or of an employee,  
23 officer or agent of the taxpayer or legal entity who reasonably  
24 is believed to possess knowledge which may be relevant in  
25 determining its tax liability, compliance or taxpayer status;

26 (3) Exercise any of the powers conferred by sections four  
27 through eight of article two of this chapter.

28 (e) If the commissioner determines, after notice and  
29 hearing, that a person has failed or refused to comply with the  
30 provisions of this article, or of any legislative rule proposed by  
31 the commissioner and approved by the Legislature pursuant to  
32 this article, the commissioner may order that the person comply  
33 with the provisions and that the person take any other steps as  
34 are reasonably necessary to allow the provisions to be enforced.  
35 If the person holds a license issued by the commissioner, the  
36 commissioner may revoke that license upon the person's failure  
37 or refusal to obey an order issued under this subsection or in the  
38 commissioner's discretion may in the alternative assess a  
39 penalty against the person in an amount up to five thousand  
40 dollars per occurrence.

41 (f) The commissioner has exclusive authority to bring or  
42 join suit in a court of competent jurisdiction, or to pursue any  
43 other action allowed by law, to enforce the provisions of this  
44 article, or of legislative rules proposed pursuant to this article  
45 and approved by the Legislature, or to enforce any order,  
46 subpoena or other directive issued by the commissioner  
47 pursuant to this article to best promote the fair, uniform and  
48 efficient administration of taxes.

**§33-43-5. Limitation on actions.**

1 The commissioner has exclusive authority to bring or join  
2 suit in a court of competent jurisdiction, or pursue any other  
3 action allowed by law, to obtain the payment of taxes and



4 related charges: *Provided*, That the commissioner must so act  
5 within ten years following the date upon which the assessment  
6 or order establishing the taxpayer's liability becomes final.

**§33-43-6. Returns.**

1 (a) Any person who is subject to a tax in a given taxable  
2 year shall file a return for that tax and that taxable year, even if  
3 the person has no tax liability for that taxable year.

4 (1) Each return shall be filed by the applicable filing date.  
5 The commissioner at his or her discretion may accept a return  
6 after the filing date.

7 (2) Should a taxpayer file more than one return for the same  
8 tax, only the return last filed shall be effective. The commis-  
9 sioner at his or her discretion may approve the withdrawal of a  
10 return by the taxpayer.

11 (b) Each return shall be executed by the taxpayer in a  
12 manner prescribed by the commissioner. Each return so  
13 executed shall constitute a sworn statement by the signatory  
14 that to the best of his or her knowledge and belief, the informa-  
15 tion provided in the return or in any supporting materials which  
16 accompany the return is true and accurate.

17 (c) All returns shall be prepared on forms prescribed by the  
18 commissioner. If no form has been prescribed for a particular  
19 tax, the return may be in a form chosen by the taxpayer but  
20 shall clearly set forth the following information: The taxpayer's  
21 name, address and telephone number; the identification number  
22 used by the taxpayer in filing federal income tax returns; the tax  
23 and taxable year to which the return applies; and all information  
24 used to calculate the tax liability of the taxpayer.

25 (d) For purposes of this article, a return is not regarded as  
26 filed if:

27 (1) It is not filed by the applicable filing date, unless the  
28 commissioner accepts the return; or

29 (2) It has not been received by the commissioner; or

30 (3) It has not been properly executed by the taxpayer; or

31 (4) It is not in the proper form; or

32 (5) It is incomplete or inaccurate in any material respect; or

33 (6) It is not accompanied by supporting material required  
34 by the commissioner; or

35 (7) It is withdrawn by the taxpayer with the approval of the  
36 commissioner; or

37 (8) It is not accompanied by the payment for any tax due.

38 (e) If a tax is to be paid in installments, the taxpayer shall  
39 file an appropriate return for each period for which an install-  
40 ment payment is calculated, even if the taxpayer is not required  
41 to make an installment payment for that period. The returns  
42 shall satisfy all requirements established for annual returns by  
43 this section except that the filing date for an installment return  
44 is the date prescribed for the installment payment for the period  
45 described by the return.

46 (f) If a taxpayer has failed to file a return by the applicable  
47 filing date, or has filed a false or fraudulent return, the commis-  
48 sioner may use any information which is available to him or her  
49 to determine the taxpayer's tax liability: *Provided*, That a  
50 determination of tax liability by the commissioner pursuant to  
51 this subsection does not relieve the taxpayer of the duty to file  
52 a true, accurate and complete return and does not reduce or  
53 preclude any penalty based upon the taxpayer's failure to file.

54 (g) A taxpayer to whom a credit has been issued may apply  
55 the credit as payment for any like tax due to be remitted by the  
56 taxpayer upon written notice to the commissioner stating the  
57 amount of the credit to be so applied.

### §33-43-7. Penalties.

1 (a) If any taxpayer fails to file a return by the applicable  
2 filing date, then for each day throughout which the taxpayer  
3 fails to file, the taxpayer is liable for a penalty of twenty-five  
4 dollars.

5 (b) If a taxpayer fails to pay a tax liability in full by the  
6 applicable payment date, then for each day throughout which a  
7 portion of the liability remains unpaid, the taxpayer is liable for  
8 a penalty in an amount equal to one percent of the unpaid  
9 portion: *Provided*, That the sum of the penalties imposed under  
10 this subsection may not exceed one hundred percent of the tax  
11 liability.

12 (c) A penalty imposed under this section may be waived or  
13 reduced by the commissioner if the taxpayer establishes, to the  
14 satisfaction of the commissioner, that the failure upon which  
15 the penalty is based was not, in whole or in part, willful or due  
16 to the neglect of the taxpayer.

17 (d) The assessment of a penalty under this section is  
18 automatic unless a waiver or reduction of the penalty is agreed  
19 to by the commissioner in writing.

### §33-43-8. Assessments.

1 (a) The commissioner may issue assessments for tax  
2 liabilities and related charges, or any portions thereof, which  
3 are due and payable but unpaid. At any time before an assess-  
4 ment becomes final, the commissioner may amend the assess-  
5 ment, in whole or in part. Except as otherwise provided in this

6 article, an assessment which is amended by the commissioner  
7 shall be regarded as a new assessment.

8 (b) The commissioner shall give the taxpayer notice of  
9 every assessment or amendment thereto. The date upon which  
10 the notice is sent to the taxpayer shall be regarded as the date  
11 upon which the assessment is issued.

12 (c) The notice of assessment shall specify the amount of  
13 each tax liability or related charge which is the subject of the  
14 assessment: *Provided*, That the notice may list interest and  
15 penalties which accrue or are imposed from the time that the  
16 assessment is issued to the time that the assessment is paid.

17 (d) Notwithstanding any other provisions of this article,  
18 assessments may be issued only within the following time  
19 periods:

20 (1) For tax liabilities, if the taxpayer has filed a return for  
21 the tax and taxable year at issue, within three years of the filing  
22 date for the return or the date upon which the return actually  
23 was filed, whichever comes later;

24 (2) For fees, within three years of the date prescribed for  
25 payment of the fee;

26 (3) For penalties based upon a failure to pay a tax, at any  
27 time.

28 (e) The commissioner shall, within ninety days of a written  
29 request by a taxpayer, issue an assessment: *Provided*, That the  
30 commissioner may refuse to issue an assessment until the  
31 taxpayer has provided the commissioner with all information  
32 necessary to determine or verify the taxpayer's outstanding  
33 liabilities for taxes and related charges.

34 (f) If the taxpayer does not timely request a hearing on an  
35 assessment pursuant to section nine of this article, the assess-  
36 ment shall become final. A final assessment is conclusive of the  
37 liability of the taxpayer and is not subject to either administra-  
38 tive or judicial review.

**§33-43-9. Hearing and appeal; judicial review.**

1 (a) Within sixty days of the issuance of an assessment or  
2 imposition of a penalty, a taxpayer may request a hearing  
3 before the commissioner on the amount or validity of the  
4 assessment or penalty. Except as otherwise provided in this  
5 article or in legislative rules proposed and approved by the  
6 Legislature thereto, the hearings are subject to the requirements  
7 established in sections thirteen and fourteen, article two of this  
8 chapter.

9 (b) A request for a hearing shall be in writing and shall set  
10 forth with reasonable particularity the taxpayer's objections to  
11 the assessment or penalty and the factual basis therefore. At any  
12 time prior to the hearing, the commissioner may allow a  
13 taxpayer to amend the request.

14 (c) The taxpayer's request shall be executed by the taxpayer  
15 in a manner prescribed by the commissioner, and a request so  
16 executed shall constitute a sworn statement by the signatory  
17 that to the best of his or her knowledge and belief, the informa-  
18 tion provided in the request is true and accurate.

19 (d) Assessments issued by the commissioner shall be  
20 presumed correct, and the taxpayer shall bear the burden of  
21 proving, by a preponderance of the evidence, that the assess-  
22 ment is incorrect or contrary to law.

23 (e) If the taxpayer does not timely appeal the commis-  
24 sioner's order, that order shall become final as of the expiration  
25 of the period during which the taxpayer may have brought an

26 appeal. Upon becoming final, an order shall be conclusive of  
27 the liability of the taxpayer and is not subject to either adminis-  
28 trative or judicial review.

29 (f) An agreed order signed by the taxpayer and the commis-  
30 sioner is final and shall constitute a waiver of the taxpayer's  
31 right to a hearing or appeal under this chapter.

### **§33-43-10. Refunds and credits.**

1 (a) This section is the sole method of receiving a refund or  
2 credit for any tax or related charge administered under this  
3 article.

4 (b) Any taxpayer claiming to be due a refund or credit for  
5 overpayment of any tax or related charge administered under  
6 this article may, within five years from the date of the filing of  
7 the return under which the tax was imposed or within four years  
8 from the date the tax was paid, whichever term expires later,  
9 file with the commissioner a petition in writing requesting a  
10 refund of the tax or any part thereof:

11 (1) If the petition and the proofs filed in support thereof  
12 persuades the commissioner that the payment of the tax or  
13 related charges or any part thereof was improperly required, he  
14 or she shall refund or issue a credit to the taxpayer for the  
15 improper amounts;

16 (2) If the commissioner is in doubt as to whether or not the  
17 taxes or related charges were proper, or if the commissioner is  
18 of the opinion that the payment of the tax collected, or any part  
19 thereof was proper, then the commissioner shall within thirty  
20 days hold a hearing to determine the issue;

21 (3) If a taxpayer is considered to be due a credit or refund,  
22 the commissioner shall, if the amount exceeds one thousand  
23 dollars, at his or her discretion, pay the amount in equal, annual

24 installments over not more than three years. The commissioner  
25 may issue a credit against future taxes in lieu of a refund  
26 payment, whether lump sum or installment;

27 (4) The payment of refunds or issuance of credits to a  
28 taxpayer pursuant to this section shall constitute a complete and  
29 final settlement of all of the taxpayer's claims for which the  
30 refunds or credits are paid. No cause of action or liability,  
31 whether for damages, attorney's fees, costs or of any other  
32 nature, shall arise against the commissioner or against his or her  
33 agents for administering or litigating the constitutionality of a  
34 tax subsequently determined to be unconstitutional.

**§33-43-11. Interest.**

1 A taxpayer shall be liable for interest on any unpaid final  
2 assessment or penalty or portion thereof: *Provided*, That  
3 interest may not be charged on interest. Interest shall be  
4 calculated using the annual rates which are established by the  
5 tax commissioner pursuant to section seventeen-a of article ten,  
6 chapter eleven of this code and shall accrue daily.

**§33-43-12. Allocation of payments.**

1 (a) Payments made by a taxpayer, other than installment  
2 payments of a tax liability which is required to be paid in  
3 installments, shall be allocated to the taxpayer's outstanding  
4 liabilities as follows:

5 (1) First, to any assessment which has become final;

6 (2) Next, to any fee which has not yet been assessed;

7 (3) Next, to any tax or related charge which has not yet  
8 been assessed;

9 (4) Finally, to any assessment which has not yet become  
10 final.

**§33-43-13. Overpayments and underpayments.**

1 (a) Upon discovering that a taxpayer has made payments in  
2 excess of the taxpayer's outstanding liabilities, the commis-  
3 sioner shall give notice of the overpayment to the taxpayer.

4 (b) Payments by a taxpayer in excess of the amounts  
5 required to satisfy the taxpayer's liabilities for taxes and related  
6 charges shall give rise to a credit against the taxpayer's future  
7 liabilities unless the taxpayer, within thirty days of receiving  
8 the notice, either requests a refund under this article and is  
9 granted the refund, or establishes to the satisfaction of the  
10 commissioner that no future liabilities will be incurred by the  
11 taxpayer.

12 (c) Upon discovering that a taxpayer has made payments  
13 less than the taxpayer's outstanding liabilities, or that the  
14 taxpayer has made no payments, the commissioner shall give  
15 notice of the underpayment to the taxpayer, which notice will  
16 be considered an assessment of the amount due.

**§33-43-14. Retroactive monetary relief for unconstitutional taxes.**

1 (a) The remedies provided by this article are exclusive and  
2 shall be in lieu of any and all remedies provided by common  
3 law or by other provisions of this code.

4 (b) Retroactive monetary relief for an unconstitutional tax  
5 shall be granted only at the express order of a court of compe-  
6 tent jurisdiction which appears in a final decision of that court.  
7 Notwithstanding any other provision of this code, a final  
8 decision ordering retroactive monetary relief may not be  
9 considered to override any statute of limitations contained  
10 within this article, or to require relief for any claim which is *res*  
11 *judicata*.



12 (c) Retroactive monetary relief shall comprise only a refund  
13 of the unconstitutional tax, or of the portion thereof that the  
14 court has ordered refunded, which actually has been paid by the  
15 taxpayer, together with any penalties or interest which are based  
16 upon the taxpayer's failure to pay the unconstitutional tax and  
17 which actually have been paid by the taxpayer.

18 (1) Except as otherwise provided in this section, retroactive  
19 monetary relief shall be paid to the taxpayer in a lump sum  
20 within one hundred eighty days of the final decision which  
21 orders the relief.

22 (2) If the amount of retroactive monetary relief due to any  
23 individual taxpayer exceeds one thousand dollars or the  
24 aggregate amount of the relief due to all taxpayers exceeds one  
25 hundred thousand dollars, the commissioner at his or her  
26 discretion may pay all refunds issued pursuant to the final  
27 decision in equal, annual installments over not more than three  
28 years. For purposes of this subsection, a year shall be a period  
29 of twelve calendar months measured from the date upon which  
30 the final decision which orders the relief is entered.

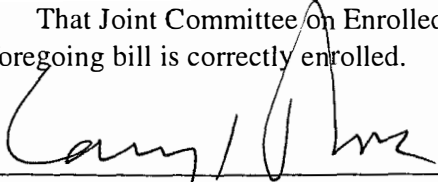
31 (3) With the approval of the taxpayer, the commissioner  
32 may issue a credit against future taxes in lieu of a refund  
33 payment due pursuant to this section, whether lump sum or  
34 installment.


35 (d) The payment of refunds or issuance of credits to a  
36 taxpayer pursuant to this section shall constitute a complete and  
37 final settlement of all of the taxpayer's claims which are based  
38 upon the unconstitutional tax for which the refunds are paid or  
39 the credits issued. No cause of action or liability, whether for  
40 damages, attorney's fees, costs or of any other nature, shall  
41 arise against the commissioner or against his or her agents for  
42 administering or litigating the constitutionality of a tax subse-  
43 quently determined to be unconstitutional.

**§33-43-15. Taxes collected on behalf of the commissioner.**

1       When a person is required to collect a tax or surcharge from  
2 another and remit the amount thus collected to the commis-  
3 sioner, the moneys collected are considered to be held by that  
4 person in trust for the state of West Virginia. With respect to  
5 the filing of returns, assessments and interest, taxes that are  
6 collected by a person to be remitted to the commissioner are  
7 treated as would a tax paid directly by that person to the  
8 commissioner. The person collecting the tax shall return to the  
9 policyholder or person paying the tax or surcharge any refund  
10 made for overpayment of the amount collected.

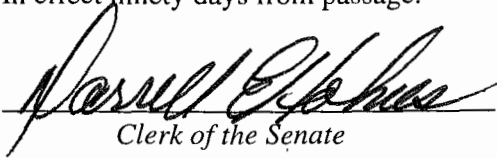
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

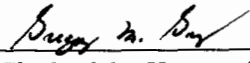
  
\_\_\_\_\_  
Chairman Senate Committee

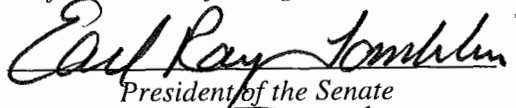
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

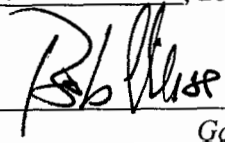
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 30<sup>th</sup>  
day of April, 2001.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/01

Time 2:15 pm