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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



# ENROLLED

HOUSE BILL No. 2802

(By Delegates Stanton Rouse, Huffman,  
Farwell, L. White + Ashley)



Passed ..... April 8, ..... 1993

In Effect ..... From ..... Passage

**ENROLLED**  
**H. B. 2802**

(By DELEGATES STATON, ROWE, HUFFMAN,  
FAIRCLOTH, L. WHITE AND ASHLEY)

[Passed April 8, 1993; in effect from passage.]

AN ACT to repeal section eighteen, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section one-j, article five, chapter twenty-three of said code; to amend chapter twenty-one-a of said code by adding thereto a new article, designated article three; to amend and reenact section eight, article three, chapter twenty-two-a of said code; to amend and reenact sections one, four, eleven, thirteen and sixteen, article one, chapter twenty-three of said code; to amend and reenact sections one-c, four, five, five-a, five-b, fifteen and seventeen, article two of said chapter; to further amend said article by adding thereto three new sections, designated sections one-d, five-c and five-d; to further amend said chapter by adding thereto a new article, designated article two-b; to amend and reenact sections one-e, three, three-a, three-c, six, eight-c, sixteen and nineteen, article four of said chapter; to further amend said article by adding thereto five new sections, designated sections one-f, twenty-two, twenty-three, twenty-four and twenty-five; to amend and reenact sections one, one-b, one-h and six, article five of said chapter, all relating to workers' compensation generally; creation of compensation programs performance council; purpose; appointment of members; membership; terms; chair; qualifications; selection by governor; compensation and traveling expenses; insurance; meetings; quorum; powers and

duties; special rule making authority; prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees; commissioner of the bureau of employment programs; compensation programs performance council; official seal; legal services; rules; office hours; records; confidentiality; exceptions; depositions; investigations; rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof; omission to subscribe to workers' compensation fund or perform duty required by commissioner; false testimony or certification; criminal penalties; extraterritorial coverage; approval and change of agreements; primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts; classification of industries; accounts; rate of premiums; prior notice of rate changes; exceptions; application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties; collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs; legislative purpose; application for settlement; reinstatement; amount of settlement; when settlement void; notification of rights; statute of limitations; effective date for new payments; previous payments due not affected; uncollectible receivables; write-offs; liabilities of successor employer; waiver of payment by commissioner; assignment of predecessor employer's premium rate to successor; employer right to hearing; content of petition; appeal; occupational safety and health activities; voluntary compliance; consultative services; mandatory programs; safety committees; requirements; rules; exceptions; premium rate credits; qualified loss manage-

ment program; loss management firms; penalties; rules; temporary total disability benefits not to be paid for periods of penitentiary or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while incarcerated; certain psychiatric injuries and diseases not compensable; schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirements; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders; wrongfully seeking payment for services or supplies; criminal penalties; restitution; suspension or termination of providers of health care; classification of and criteria for disability benefits; occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims; commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules; wrongfully seeking compensation; criminal penalties; restitution; termination of compensation; permanent disability evaluations; limitations; notice; permanent total disability benefits; reduction of disability benefits; social security benefits; applications; release of information; credit or reduction of benefits; application of section; severability; permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction; permanent total disability benefits; reduction of disability benefits for wages earned by claimant; notice by commissioner of decision; procedures on claims; objections and hearing; mediation; refusal to

reopen claim; notice; objection; hearings on objections to commissioner's decisions by office of administrative law judges; and providing for the application of claims and cases of self-insured employers.

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

That section eighteen, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one-j, article five of said chapter be repealed; that chapter twenty-one-a of said code be amended by adding thereto a new article, designated article three; that section eight, article three, chapter twenty-two-a of said code be amended and reenacted; that sections one, four, eleven, thirteen and sixteen, article one, chapter twenty-three of said code be amended and reenacted; that sections one-c, four, five, five-a, five-b, fifteen and seventeen, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections one-d, five-c and five-d; that said chapter be amended by adding thereto a new article, designated article two-b; that sections one-e, three, three-a, three-c, six, eight-c, sixteen and nineteen, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto five new sections, designated section one-f, twenty-two, twenty-three, twenty-four and twenty-five; that sections one, one-b, one-h and six, article five of said chapter be amended and reenacted, all to read as follows:

**CHAPTER 21A.  
UNEMPLOYMENT COMPENSATION.**

**ARTICLE 3. COMPENSATION PROGRAMS PERFORMANCE  
COUNCIL.**

**§21A-3-1. Creation of compensation programs perfor-  
mance council; purpose.**

1     There is hereby created within the bureau of employ-  
2     ment programs a "compensation programs performance  
3     council". The purpose of said council shall be to ensure  
4     the effective, efficient and financially stable operation of  
5     the unemployment compensation system and the  
6     workers' compensation system of the state of West  
7     Virginia.

**§21A-3-2. Appointment of members.**

1 The members of the council shall be appointed by the  
2 governor by and with the advice and consent of the  
3 Senate.

**§21A-3-3. Membership; terms; chair.**

1 The compensation programs performance council  
2 shall consist of nine members: Four representing the  
3 interests of employees; four representing the interests of  
4 employers; and the commissioner of the bureau of  
5 employment programs.

6 The term of each member except the commissioner  
7 shall be for six years. The term of the commissioner  
8 shall continue for that period in which he or she holds  
9 that office.

10 The terms of all the initially appointed members of  
11 the council shall begin on the first day of July, one  
12 thousand nine hundred ninety-three.

13 Of the persons initially appointed, four members,  
14 including two members of each of the two representative  
15 groups, shall be designated to serve for terms of two  
16 years each, two members, including one member of each  
17 of the two representative groups, shall be designated to  
18 serve for terms of four years each, and two members,  
19 including one member of each of the two representative  
20 groups shall be designated to serve for terms of six years  
21 each. As these appointments expire, subsequent appoint-  
22 ments shall be for six-year terms.

23 The commissioner shall serve as chair of the council  
24 and shall be entitled to vote on all matters. The council  
25 shall elect from its members a vice-chair.

**§21A-3-4. Qualifications; selection by governor.**

1 Members of the council shall be selected with special  
2 reference to their ability and fitness to effectuate the  
3 purposes of this chapter and chapter twenty-three of this  
4 code.

5 In appointing members of this council to represent the  
6 interests of employees, the governor shall select

7 members as follows:

8 One member shall be appointed from a list of at least  
9 three names submitted to the governor by the united  
10 mine workers of America;

11 Two members shall be appointed from a list of at least  
12 six names submitted to the governor by the West  
13 Virginia labor federation, with one representing  
14 construction trades and one representing industrial  
15 workers; and

16 One member selected by the governor to represent the  
17 general interests of employees covered under the  
18 provisions of this chapter and chapter twenty-three of  
19 this code.

20 In appointing members of this council to represent the  
21 interests of employers, the governor shall select  
22 members as follows:

23 One member shall be appointed from a list of at least  
24 three names submitted to the governor by the West  
25 Virginia coal industry;

26 One member shall be appointed from a list of at least  
27 three names submitted to the governor by the West  
28 Virginia manufacturers association;

29 One member shall be appointed from a list of at least  
30 three names submitted to the governor by the West  
31 Virginia chamber of commerce; and

32 One member selected by the governor to represent the  
33 general interests of employers covered under the  
34 provisions of this chapter and chapter twenty-three of  
35 this code.

36 The governor shall ensure that employer representa-  
37 tion includes a representative of small businesses  
38 employing fifty or less employees on a regular basis.

**§21A-3-5. Compensation and traveling expenses;  
insurance.**

1 Members of the council shall receive reasonable  
2 compensation for each day actually served in attendance  
3 at meetings of the council and such traveling expenses

4 as are incurred in the performance of his or her duties.  
5 Payment for traveling expenses shall be made consistent  
6 with state law.

7 Each member of this council shall be provided  
8 appropriate liability insurance, without additional  
9 premium, by the state board of risk and insurance  
10 management established pursuant to article twelve,  
11 chapter twenty-nine of this code.

**§21A-3-6. Meetings; quorum.**

1 The council shall hold meetings at any time at the call  
2 of the commissioner. The commissioner shall call a  
3 meeting whenever three of the other members of the  
4 council request the commissioner to do so. The exact  
5 date and time of each meeting shall be determined by  
6 the commissioner.

7 A majority of the members of the council shall  
8 constitute a quorum for the conduct of council business  
9 and, except as stated in subdivision (m) of section seven  
10 of this article, all issues shall be resolved by a majority  
11 vote of the total membership.

**§21A-3-7. Powers and duties; special rule-making  
authority.**

1 The council shall have the following powers and  
2 duties:

3 (a) Assist the governor and the commissioner in the  
4 development of overall administrative policy for the  
5 unemployment compensation and workers' compensa-  
6 tion systems of the state.

7 (b) Recommend legislation and establish regulations  
8 designed to ensure the effective administration and  
9 financial viability of the unemployment compensation  
10 system and the workers' compensation system of West  
11 Virginia.

12 (c) Review and approve, reject or modify rules and  
13 regulations that are proposed or promulgated by the  
14 commissioner for operation of the workers' compensa-  
15 tion system before the filing of the rules and regulations  
16 with the secretary of state. This provision is applicable



17 to any instance under chapter twenty-three of this code  
18 which authorizes the commissioner to promulgate rules  
19 and regulations. Notwithstanding any provision in this  
20 code to the contrary, including sections one and two,  
21 article three and section three, article seven both of  
22 chapter twenty-nine-a of this code, any rules and  
23 regulations adopted pursuant to this section which are  
24 applicable to the provisions of chapter twenty-three of  
25 this code shall not be subject to sections nine through  
26 sixteen, all of article three, chapter twenty-nine-a of this  
27 code. The commissioner and the compensation programs  
28 performance council shall follow the remaining provi-  
29 sions of said article, for giving notice to the public of  
30 their actions and the holding of hearings or receiving  
31 of comments on the rules. No later amendment to this  
32 code shall have precedence over this section unless such  
33 later amendment specifically provides to the contrary.

34 (d) In accordance with the laws and regulations of  
35 West Virginia and the United States government,  
36 establish and monitor performance measurements to  
37 ensure the timeliness and accuracy of activities per-  
38 formed under the unemployment compensation laws and  
39 the workers' compensation laws.

40 (e) Have the final right of approval of all base rates  
41 for employers covered by the workers' compensation law  
42 as recommended by the commissioner.

43 (f) Advocate sufficient administrative resources to  
44 effectively operate the unemployment compensation  
45 system and the workers' compensation system of West  
46 Virginia.

47 (g) Approve the designation of health care providers  
48 to make decisions regarding appropriateness of medical  
49 services pursuant to subsection (d), section one, article  
50 five, chapter twenty-three of this code.

51 (h) Ensure that the unemployment compensation  
52 system and the workers' compensation system of West  
53 Virginia develop and pursue an effective program of  
54 outreach and communication to employers, workers and  
55 others involved in these programs.

56 (i) Analyze opportunities to affect efficiencies and  
57 improvements for employers and workers by developing  
58 common definitions, interrelated systems and other  
59 internal operational improvements, including long-  
60 range planning for improvements.

61 (j) Develop programs, linkages in the public sector  
62 and the private sector, and information materials  
63 designed to promote the early return to work of  
64 individuals receiving unemployment compensation  
65 benefits or workers' compensation benefits.

66 (k) Examine the current design and report recommen-  
67 dations to the governor and the Legislature regarding  
68 the second injury reserve of the surplus fund and the  
69 financial viability of the state's workers' compensation  
70 system.

71 (l) Consider such other matters regarding the unem-  
72 ployment compensation system or the workers' compen-  
73 sation system as the commissioner or any appointed  
74 member of the council may desire.

75 (m) On or before the first day of September, one  
76 thousand nine hundred ninety-three, establish vocational  
77 standards to be considered in making decisions on  
78 permanent total disability awards under subdivision (n),  
79 section six, article four, chapter twenty-three of this  
80 code: *Provided*, That the compensation programs  
81 performance council is expressly authorized to establish  
82 this standard irrespective of court decisions interpreting  
83 any previous enactment of said subdivision: *Provided*,  
84 *however*, That adoption of said vocational standard shall  
85 require an affirmative vote of two thirds of the members  
86 of said compensation programs performance council.

87 (n) Adopt criteria for the determination and standards  
88 for the payment of attorneys' fees pursuant to subdivi-  
89 sion (2), subsection (c), section sixteen, article four,  
90 chapter twenty-three of this code.

## CHAPTER 22A. MINES AND MINERALS.

### ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

**§22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.**

1 No person may engage in surface-mining operations  
2 unless such person has first obtained a permit from the  
3 commissioner in accordance with the following:

4 (a) Within two months after the secretary of the  
5 interior approves a permanent state program for West  
6 Virginia, all surface-mining operators shall file an  
7 application for a permit or modification of a valid  
8 existing permit or underground opening approval  
9 relating to those lands to be mined eight months after  
10 that approval.

11 (b) No later than eight months after the secretary's  
12 approval of a permanent state program for West  
13 Virginia, no person may engage in or carry out, on lands  
14 within this state, any surface-mining operations unless  
15 such person has first obtained a permit from the  
16 commissioner: *Provided*, That those persons conducting  
17 such operations under a permit or underground opening  
18 approval issued in accordance with section 502 (c) of  
19 Public Law 95-87, and in compliance therewith, may  
20 conduct such operations beyond such period if an  
21 application for a permit or modification of a valid  
22 existing permit or underground opening approval was  
23 filed within two months after the secretary's approval,  
24 and the administrative decision pertaining to the  
25 granting or denying of such permit has not been made  
26 by the commissioner.

27 (c) All permits issued pursuant to the requirements of  
28 this article shall be issued for a term not to exceed five  
29 years: *Provided*, That if the applicant demonstrates that  
30 a specified longer term is reasonably needed to allow the  
31 applicant to obtain necessary financing for equipment  
32 and the opening of the operation, and if the application  
33 is full and complete for such specified longer term, the  
34 commissioner may extend a permit for such longer  
35 term: *Provided, however*, That subject to the prior  
36 approval of the commissioner, with such approval being

37 subject to the provisions of subsection (c), section  
38 eighteen of this article, a successor in interest to a  
39 permittee who applies for a new permit, or transfer of  
40 a permit, within thirty days of succeeding to such  
41 interest, and who is able to obtain the bond coverage of  
42 the original permittee, may continue surface-mining  
43 and reclamation operations according to the approved  
44 mining and reclamation plan of the original permittee  
45 until such successor's permit application or application  
46 for transfer is granted or denied.

47 (d) Proof of insurance shall be required on an annual  
48 basis.

49 (e) A permit shall terminate if the permittee has not  
50 commenced the surface-mining operations covered by  
51 such permit within three years of the date the permit  
52 was issued: *Provided*, That the commissioner may grant  
53 reasonable extensions of time upon a timely showing  
54 that such extensions are necessary by reason of litigation  
55 precluding such commencement, or threatening sub-  
56 stantial economic loss to the permittee, or by reason of  
57 conditions beyond the control and without the fault or  
58 negligence of the permittee: *Provided, however*, That  
59 with respect to coal to be mined for use in a synthetic  
60 fuel facility or specific major electric generating  
61 facility, the permittee shall be deemed to have com-  
62 menced surface-mining operations at such time as the  
63 construction of the synthetic fuel or generating facility  
64 is initiated.

65 (f) Each application for a new surface-mining permit  
66 filed pursuant to this article shall be accompanied by  
67 a fee of one thousand dollars. All permit fees and  
68 renewal fees provided for in this section or elsewhere in  
69 this article shall be collected by the commissioner and  
70 deposited with the treasurer of the state of West  
71 Virginia to the credit of the operating permit fees fund  
72 and shall be used, upon requisition of the commissioner,  
73 for the administration of this article.

74 (g) Prior to the issuance of any permit, the commis-  
75 sioner of energy shall ascertain from the commissioner  
76 of labor compliance with section fourteen, article five,

77 chapter twenty-one of this code. Upon issuance of the  
78 permit, the commissioner of energy shall forward a copy  
79 to the commissioner of labor, who shall assure continued  
80 compliance under such permit.

81 (h) Prior to the issuance of any permit, the director  
82 of the division of environmental protection shall  
83 ascertain from the commissioner of the bureau of  
84 employment programs whether the applicant is in  
85 compliance with the provisions of section five, article  
86 two, chapter twenty-three of this code. If the applicant  
87 is not in compliance, then the permit shall not be issued  
88 until the applicant returns to compliance: *Provided,*  
89 That in all such inquiries the commissioner of the  
90 bureau of employment programs shall make response to  
91 the division of environmental protection within fifteen  
92 calendar days, otherwise failure to respond timely shall  
93 be considered to indicate the applicant is in compliance  
94 and such failure will not be used to preclude issuance  
95 of the permit.

## CHAPTER 23. WORKERS' COMPENSATION.

### ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

#### §23-1-1. Commissioner of the bureau of employment programs; compensation programs performance council; official seal; legal services; rules.

1 The commissioner of the bureau of employment  
2 programs appointed under the provisions of section one,  
3 article two, chapter twenty-one-a of this code, has the  
4 sole responsibility for the administration of this chapter  
5 except for such matters as are entrusted to the compen-  
6 sation programs performance council created pursuant  
7 to section one, article three, chapter twenty-one-a of this  
8 code. In the administration of this chapter, the commis-  
9 sioner shall exercise all the powers and duties described  
10 in this chapter and in article two, of said chapter. The  
11 commissioner is authorized to promulgate rules and  
12 regulations to implement the provisions of articles one  
13 through five of this chapter. The commissioner shall  
14 have an official seal for the authentication of orders and  
15 proceedings, upon which seal shall be engraved the

16 words "West Virginia Commissioner of Employment  
17 Programs" and such other design as the commissioner  
18 may prescribe. The courts in this state shall take  
19 judicial notice of the seal of the commissioner and in all  
20 cases copies of orders, proceedings or records in the  
21 office of the West Virginia commissioner of employment  
22 programs shall be equal to the original in evidence.

23 The attorney general shall perform all legal services  
24 required by the commissioner under the provisions of  
25 this chapter: *Provided*, That in any case in which an  
26 application for review is prosecuted from any final  
27 decision of the workers' compensation appeal board to  
28 the supreme court of appeals, as provided by section  
29 four, article five of this chapter, or in any court  
30 proceeding before the workers' compensation appeal  
31 board, or in any proceedings before the office of judges,  
32 in which such representation shall appear to the  
33 commissioner to be desirable, the commissioner may  
34 designate a regular employee of this office, qualified to  
35 practice before such court to represent the commissioner  
36 upon such appeal or proceeding, and in no case shall the  
37 person so appearing for the commissioner before the  
38 court receive remuneration therefor other than such  
39 person's regular salary.

**§23-1-4. Office hours; records; confidentiality; exceptions.**

1 (a) The offices of the commissioner shall be open for  
2 the transaction of business between the hours of eight-  
3 thirty o'clock a.m., and five o'clock p.m., of each and  
4 every day, excepting Saturdays, Sundays and legal  
5 holidays, and be open upon such additional days and at  
6 such additional times as the commissioner may elect,  
7 and be in charge of his or her secretary or some other  
8 competent person.

9 (b) Except as expressly provided for in this subsection,  
10 information obtained from employers and claimants  
11 pursuant to this chapter for the purposes of its admin-  
12 istration shall not be subject to the provisions of chapter  
13 twenty-nine-b of this code unless such provisions are  
14 hereafter specifically made applicable in whole or in  
15 part. Such information as may be reasonably necessary

16 may be released in formal orders or opinions of any  
17 tribunal or court which is presented with an issue  
18 arising under this chapter as well as in the presentations  
19 of the parties before any such tribunal or court.  
20 Similarly, claimants or other interested parties to an  
21 issue arising under this chapter may, upon request,  
22 obtain information from the division's records to the  
23 extent necessary for the proper presentation or defense  
24 of a claim or other matter. Information may be released  
25 to any requestor if all identifying information has first  
26 been eliminated from the records. Nothing in this  
27 subsection shall prevent the release of information to  
28 another agency of the state or of the federal government  
29 for the legitimate purposes of those agencies: *Provided,*  
30 That any such agency shall guarantee the confidentiality  
31 of the information so provided to the fullest extent  
32 possible in keeping with its own statutory and regula-  
33 tory mandates. Nothing in this section shall prevent the  
34 commissioner from complying with any subpoena duces  
35 tecum: *Provided, however,* That the issuing tribunal or  
36 court shall take such actions as may be proper to  
37 maintain the confidentiality of the information.

38 The commissioner may release, pursuant to a proper  
39 request under the provisions of chapter twenty-nine-b of  
40 this code, the following information:

- 41 (1) The base premium rate for a specific employer;
- 42 (2) Whether or not a specific employer has obtained  
43 coverage under the provisions of this chapter;
- 44 (3) Whether or not a specific employer is in good  
45 standing or is delinquent or in default according to the  
46 commissioner's records and the time periods thereof;  
47 and
- 48 (4) If a specific employer is delinquent or in default,  
49 what the payments due the commissioner are and what  
50 the components of that payment are including the time  
51 periods affected.

**§23-1-11. Depositions; investigations.**

- 1 (a) In an investigation into any matter arising under  
2 this chapter, the commissioner may cause depositions of

3 witnesses residing within or without the state to be  
4 taken in the manner prescribed by law for like depo-  
5 sitions in the circuit court, but such depositions shall be  
6 upon reasonable notice to claimant and employer or  
7 other affected persons or their respective attorneys. The  
8 commissioner shall designate the person to represent  
9 him or her for the taking of any such deposition.

10 (b) The commissioner shall also have discretion to  
11 accept and consider depositions taken within or without  
12 the state by either the claimant or employer, provided  
13 due and reasonable notice of the taking of such depo-  
14 sitions was given to the other party, claimant or  
15 employer, as the case may be, or his or her attorney:  
16 *Provided*, That the commissioner, upon due notice both  
17 to the employer and claimant, shall have authority to  
18 refuse or permit the taking of such depositions or to  
19 reject such depositions after the taking thereof, if in his  
20 or her opinion they were taken at such place or under  
21 such circumstances as imposed an undue burden or  
22 hardship upon the opposite party, and the commission-  
23 er's discretion to accept, refuse to approve, or reject such  
24 depositions shall be binding in the absence of abuse of  
25 such discretion.

**§23-1-13. Rules of procedure and evidence; persons  
authorized to appear in proceedings; with-  
holding of psychiatric and psychological  
reports and providing summaries thereof.**

1 (a) The commissioner shall adopt reasonable and  
2 proper rules of procedure, regulate and provide for the  
3 kind and character of notices, and the service thereof,  
4 in cases of accident and injury to employees, the nature  
5 and extent of the proofs and evidence, the method of  
6 taking and furnishing the same to establish the rights  
7 to benefits or compensation from the fund hereinafter  
8 provided for, or directly from employers as hereinafter  
9 provided, as the case may require, and the method of  
10 making investigations, physical examinations and  
11 inspections, and prescribe the time within which  
12 adjudications and awards shall be made.

13 (b) At hearings and other proceedings before the



14 commissioner or before the duly authorized representa-  
15 tive of the commissioner, an employer who is a natural  
16 person may appear, and a claimant may appear, only  
17 as follows:

18 (1) By an attorney duly licensed and admitted to the  
19 practice of law in this state;

20 (2) By a nonresident attorney duly licensed and  
21 admitted to practice before a court of record of general  
22 jurisdiction in another state or country or in the District  
23 of Columbia who has complied with the provisions of  
24 rule 8.0—admission pro hac vice, West Virginia su-  
25 preme court rules for admission to the practice of law,  
26 as amended;

27 (3) By a representative from a labor organization who  
28 has been recognized by the commissioner as being  
29 qualified to represent a claimant or who is an individual  
30 otherwise found to be qualified by the commissioner to  
31 act as a representative. Such representative shall  
32 participate in the presentation of facts, figures and  
33 factual conclusions as distinguished from the presenta-  
34 tion of legal conclusions in respect to such facts and  
35 figures; or

36 (4) Pro se.

37 (c) At hearings and other proceedings before the  
38 commissioner or before the duly authorized representa-  
39 tive of the commissioner, an employer who is not a  
40 natural person may appear only as follows:

41 (1) By an attorney duly licensed and admitted to the  
42 practice of law in this state;

43 (2) By a nonresident attorney duly licensed and  
44 admitted to practice before a court of record of general  
45 jurisdiction in another state or country or in the District  
46 of Columbia who has complied with the provisions of  
47 rule 8.0—admission pro hac vice, West Virginia su-  
48 preme court rules for admission to the practice of law,  
49 as amended;

50 (3) By a member of the board of directors of a  
51 corporation or by an officer of the corporation, for

52 purposes of representing the interest of the corporation  
53 in the presentation of facts, figures and factual conclu-  
54 sions as distinguished from the presentation of legal  
55 conclusions in respect to such facts and figures; or

56 (4) By a representative from an employer service  
57 company who has been recognized by the commissioner  
58 as being qualified to represent an employer or who is  
59 an individual otherwise found to be qualified by the  
60 commissioner to act as a representative. Such represen-  
61 tative shall participate in the presentation of facts,  
62 figures and factual conclusions as distinguished from  
63 the presentation of legal conclusions in respect to such  
64 facts and figures.

65 (d) The commissioner or his or her representative may  
66 require an individual appearing on behalf of a natural  
67 person or corporation to produce satisfactory evidence  
68 that he or she is properly qualified and authorized to  
69 so appear pursuant to this section.

70 (e) Subsections (b), (c) and (d) of this section shall not  
71 be construed as being applicable to proceedings before  
72 the office of judges pursuant to the provisions of article  
73 five of this chapter.

74 (f) At the direction of a treating or evaluating  
75 psychiatrist or clinical doctoral level psychologist, a  
76 psychiatric or psychological report concerning a claim-  
77 ant who is receiving treatment or is being evaluated for  
78 psychiatric or psychological problems may be withheld  
79 from the claimant. In that event, a summary of the  
80 report shall be compiled by the reporting psychiatrist  
81 or clinical doctoral level psychologist which summary  
82 shall be provided to the claimant upon his or her  
83 request. Any representative or attorney of the claimant  
84 must agree to provide such a claimant with only the  
85 summary before the full report shall be provided to the  
86 representative or attorney for his or her use in prepar-  
87 ing the claimant's case. Such a report shall only be  
88 withheld from the claimant in those instances where the  
89 treating or evaluating psychiatrist or clinical doctoral  
90 level psychologist certifies that exposure to the contents  
91 of the full report is likely to cause serious harm to the

92 claimant or is likely to cause the claimant to pose a  
93 serious threat of harm to a third party.

**§23-1-16. Omission to subscribe to workers' compensation fund or to perform duty required by commissioner; false testimony or certification; criminal penalties.**

1 Any person, firm or corporation which is required by  
2 the provisions of this chapter to subscribe to the  
3 workers' compensation fund, and which knowingly fails  
4 to subscribe thereto, or which knowingly and willfully  
5 fails to make any report or perform any other act or  
6 duty required by the commissioner within the time  
7 specified by the commissioner, shall be guilty of a  
8 felony, and, upon conviction thereof, shall be fined not  
9 less than one thousand dollars and not more than ten  
10 thousand dollars. Any person or firm, or the officer of  
11 any corporation, who knowingly makes a false report or  
12 statement under oath, affidavit or certification respect-  
13 ing any information required by the commissioner, or  
14 who shall knowingly testify falsely in any proceeding  
15 before the commissioner or the office of judges, shall be  
16 considered guilty of a felony, and, upon conviction  
17 thereof, shall be fined not less than one thousand dollars  
18 and not more than ten thousand dollars or confined in  
19 the penitentiary for not more than three years, or both.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.**

**§23-2-1c. Extraterritorial coverage; approval and change of agreements.**

1 (a) Whenever, with respect to an employee of an  
2 employer who is a subscriber in good standing to the  
3 workers' compensation fund or an employer who has  
4 elected to pay compensation directly, as provided in  
5 section nine of this article, there is a possibility of  
6 conflict with respect to the application of workers'  
7 compensation laws because the contract of employment  
8 is entered into and all or some portion of the work is  
9 performed or is to be performed in a state or states other  
10 than this state, the employer and the employee may  
11 agree to be bound by the laws of this state or by the

12 laws of such other state in which all or some portion of  
13 the work of the employee is to be performed: *Provided,*  
14 That the commissioner shall have the authority to  
15 review and accept or reject any such agreement. Any  
16 such review shall be conducted in keeping with the  
17 commissioner's fiduciary obligations to the workers'  
18 compensation fund which may include, among other  
19 things, the nexus of the employer and the employee to  
20 the state: *Provided, however,* That nothing in this section  
21 shall be construed so as to require such an agreement  
22 in those instances where subdivision (3), subsection (b),  
23 section one of this article or subdivision (1), subsection  
24 (a), section one-a of this article are applicable. Such  
25 agreement shall be in writing and filed with the  
26 commissioner within ten days after execution thereof  
27 but shall not become effective until approved by the  
28 commissioner and shall, thereafter, remain in effect  
29 until terminated or modified by agreement of the  
30 parties similarly filed or by order of the commissioner.  
31 If the parties agree to be bound by the laws of this state,  
32 an employee injured within the terms and provisions of  
33 this chapter shall be entitled to benefits under this  
34 chapter regardless of the situs of the injury or exposure  
35 to occupational pneumoconiosis or other occupational  
36 disease, and the rights of the employee and his or her  
37 dependents under the laws of this state shall be the  
38 exclusive remedy against the employer on account of  
39 injury, disease or death in the course of and as a result  
40 of the employment.

41 (b) If the parties agree to be bound by the laws of  
42 another state and the employer has complied with the  
43 laws of that state, the rights of the employee and his or  
44 her dependents under the laws of that state shall be the  
45 exclusive remedy against the employer on account of  
46 injury, disease or death in the course of and as a result  
47 of the employment without regard to the situs of the  
48 injury or exposure to occupational pneumoconiosis or  
49 other occupational disease.

50 (c) If the employee is a resident of a state other than  
51 this state and is subject to the terms and provisions of  
52 the workers' compensation law or similar laws of a state

53 other than this state, such employee and his dependents  
54 shall not be entitled to the benefits payable under this  
55 chapter on account of injury, disease or death in the  
56 course of and as a result of employment temporarily  
57 within this state, and the rights of such employee and  
58 his dependents under the laws of such other state shall  
59 be the exclusive remedy against the employer on  
60 account of such injury, disease or death.

61 (d) If any employee or his or her dependents be  
62 awarded workers' compensation benefits or recover  
63 damages from the employer under the laws of another  
64 state for an injury received in the course of and  
65 resulting from the employment, the amount so awarded  
66 or recovered, whether paid or to be paid in future  
67 installments, shall be credited against the amount of any  
68 benefits payable under this chapter for the same injury.

**§23-2-1d. Primary contractor liability; definitions; appli-  
cations and exceptions; certificates of good  
standing; reimbursement and indemnifica-  
tion; termination of contracts; effective date;  
collections efforts.**

1 (a) For the exclusive purposes of this section, the term  
2 "employer" as defined in section one of this article shall  
3 include any primary contractor who regularly subcon-  
4 tracts with other employers for the performance of any  
5 work arising from or as a result of the primary  
6 contractor's own contract: *Provided*, That a subcontrac-  
7 tor shall not include one providing goods rather than  
8 services. In the event that such a subcontracting  
9 employer defaults on its obligations to make payments  
10 to the commissioner, then such primary contractor shall  
11 be liable for such payments. Notwithstanding the  
12 foregoing, nothing contained in this section shall extend  
13 or except to such primary contractor or subcontractors  
14 the provisions of sections six, six-a or eight of this  
15 article. This section is applicable only with regards to  
16 subcontractors with whom the primary contractor has  
17 a contract. It is not applicable to the primary contractor  
18 with regard to sub-subcontractors. However, a subcon-  
19 tractor for the purposes of a contract with the primary  
20 contractor can itself become a primary contractor with

21 regard to other employers with whom it subcontracts.

22 (b) A primary contractor may avoid initial liability  
23 under subsection (a) of this section if it obtains from the  
24 commissioner, prior to the initial performance of any  
25 work by the subcontractor's employees, a certificate that  
26 the subcontractor is in good standing with the workers'  
27 compensation fund.

28 (1) Failure to obtain the certificate of good standing  
29 prior to the initial performance of any work by the  
30 subcontractor shall result in the primary contractor  
31 being equally liable with the subcontractor for all  
32 delinquent and defaulted premiums, premium deposits,  
33 interest and other penalties arising during the life of the  
34 contract or due to work performed in furtherance of the  
35 contract: *Provided*, That the commissioner shall be  
36 entitled to collect only once for the amount of premiums,  
37 premium deposits and interest due to the default, but  
38 the commissioner may impose other penalties on the  
39 primary contractor or on the subcontractor, or both.

40 (2) In order to continue avoiding liability under this  
41 section, the primary contractor shall request that the  
42 commissioner of the bureau of employment programs  
43 inform the primary contractor of any subsequent default  
44 by the subcontractor. In the event that the subcontractor  
45 does default, the commissioner shall then notify the  
46 primary contractor of the default by placing a notice in  
47 the first class United States mail, postage prepaid, and  
48 addressed to the primary contractor at the address  
49 furnished to the commissioner by the primary contrac-  
50 tor. Such mailing shall be good and sufficient notice to  
51 the primary contractor of the subcontractor's default.  
52 However, the primary contractor shall not become liable  
53 under this section until the first day of the calendar  
54 quarter following the calendar quarter in which the  
55 notice is given and then such liability shall only be for  
56 that following calendar quarter and thereafter and only  
57 if the subcontract has not been terminated: *Provided*,  
58 That the commissioner shall be entitled to collect only  
59 once for the amount of premiums, premium deposits and  
60 interest due to the default, but the commissioner may  
61 impose other penalties on the primary contractor or on

62 the subcontractor, or both.

63 (c) In any situation where a subcontractor defaults  
64 with regard to its payment obligations under this  
65 chapter or fails to provide a certificate of good standing  
66 as provided for in this section, such default or failure  
67 shall be good and sufficient cause for a primary  
68 contractor to hold the subcontractor responsible and to  
69 seek reimbursement or indemnification for any amounts  
70 paid on behalf of the subcontractor to avoid or cure a  
71 workers' compensation default, plus related costs  
72 including reasonable attorneys' fees, and to terminate its  
73 subcontract with the subcontractor notwithstanding any  
74 provision to the contrary in the contract.

75 (d) The provisions of this section are applicable only  
76 to those contracts entered into or extended on or after  
77 the first day of January, one thousand nine hundred  
78 ninety-four.

79 (e) The commissioner may take any action authorized  
80 by section five-a of this article in furtherance of his or  
81 her efforts to collect amounts due from the primary  
82 contractor under this section.

**§23-2-4. Classification of industries; accounts; rate of  
premiums; prior notice of rate changes;  
exceptions.**

1 The commissioner shall distribute into groups or  
2 classes the employments subject to this chapter, in  
3 accordance with the nature of the business and the  
4 degree of hazard incident thereto. And the commis-  
5 sioner shall have power, in like manner, to reclassify  
6 such industries into groups or classes at any time, and  
7 to create additional groups or classes. The commissioner  
8 may make necessary expenditures to obtain statistical  
9 and other information to establish the classes provided  
10 for in this section.

11 The commissioner shall keep an accurate account of  
12 all money or moneys paid or credited to the compensa-  
13 tion fund, and of the liability incurred and disburse-  
14 ments made against same; and an accurate account of  
15 all money or moneys received from each individual

16 subscriber, and of the liability incurred and disburse-  
17 ments made on account of injuries and death of the  
18 employees of each subscriber, and of the receipts and  
19 incurred liability of each group or class.

20 In compensable fatal and total permanent disability  
21 cases, other than occupational pneumoconiosis, the  
22 amount charged against the employer's account shall be  
23 such sum as is estimated to be the average incurred loss  
24 of such cases to the fund. The amount charged against  
25 the employer's account in compensable occupational  
26 pneumoconiosis claims for total permanent disability or  
27 for death shall be such sum as is estimated to be the  
28 average incurred loss of such occupational pneumoconi-  
29 osis cases to the fund.

30 It shall be the duty of the commissioner and the  
31 compensation programs performance council to fix and  
32 maintain the lowest possible rates of premiums consist-  
33 ent with the maintenance of a solvent workers' compen-  
34 sation fund and the creation and maintenance of a  
35 reasonable surplus in each group after providing for the  
36 payment to maturity of all liability incurred by reason  
37 of injury or death to employees entitled to benefits under  
38 the provisions of this chapter. A readjustment of rates  
39 shall be made yearly on the first day of July, or at any  
40 time the same may be necessary. At such times as the  
41 commissioner elects to readjust the base rates for the  
42 various industrial classifications, the commissioner shall  
43 file a schedule of the readjusted base rates for each  
44 industrial class with the office of the secretary of state  
45 for publication in the state register pursuant to article  
46 two, chapter twenty-nine-a of this code. Such schedule  
47 shall be so filed at least thirty days prior to the first day  
48 of the quarter to which an adjustment of rates is to be  
49 applicable. At such times as the commissioner elects to  
50 readjust the individual merit rates for the subscribers  
51 to the fund, the commissioner shall provide notice of  
52 such merit rate adjustments to the affected employers  
53 at least thirty days prior to the first day of the quarter  
54 to which an adjustment of rates is to be applicable. The  
55 commissioner shall not retroactively increase or de-  
56 crease rates except in instances of fraud, mistake or



57 reliance upon incorrect information furnished by the  
58 employer. The determination of the lowest possible rates  
59 of premiums within the meaning hereof and of the  
60 existence of any surplus or deficit in the fund shall be  
61 predicated solely upon the experience and statistical  
62 data compiled from the records and files in the  
63 commissioner's office under this and prior workers'  
64 compensation laws of this state for the period from the  
65 first day of June, one thousand nine hundred thirteen,  
66 to the nearest practicable date prior to such adjustment:  
67 *Provided*, That any expected future return, in the nature  
68 of interest or income from invested funds, shall be  
69 predicated upon the average realization from invest-  
70 ments to the credit of the compensation fund for the two  
71 years next preceding. Any reserves set up for future  
72 liabilities and any commutation of benefits shall  
73 likewise be predicated solely upon prior experience  
74 under this and preceding workers' compensation laws  
75 and upon expected realization from investments deter-  
76 mined by the respective past periods, as aforesaid.

77 The commissioner and the compensation programs  
78 performance council may fix a rate of premiums  
79 applicable alike to all subscribers forming a group or  
80 class, and such rates shall be determined from the  
81 record of such group or class shown upon the books of  
82 the commissioner: *Provided*, That if any group has a  
83 sufficient number of employers with considerable  
84 difference in their degrees of hazard, the commissioner  
85 may fix a rate for each subscriber of such group, such  
86 rate to be based upon the subscriber's record on the  
87 books of the commissioner for a period not to exceed  
88 three years ending the thirty-first day of December of  
89 the year preceding the year in which the rate is to be  
90 effective; and the liability part of such record shall  
91 include such cases as have been acted upon by the  
92 commissioner during such three-year period, irrespec-  
93 tive of the date the injury was received; and any  
94 subscriber in a group so rated, whose record for such  
95 period cannot be obtained, shall be given a rate based  
96 upon the subscriber's record for any part of such period  
97 as may be deemed just and equitable by the commis-  
98 sioner; and the commissioner shall have authority to fix

99 a reasonable minimum and maximum for any group to  
100 which this individual method of rating is applied, and  
101 to add to the rate determined from the subscriber's  
102 record such amount as is necessary to liquidate any  
103 deficit in the schedule as to create a reasonable surplus.

104 It shall be the duty of the commissioner, when the  
105 commissioner changes any rate, to notify every employer  
106 affected thereby of that fact and of the new rate and  
107 when the same takes effect. It shall also be the  
108 commissioner's duty to furnish to each employer yearly,  
109 or more often if requested by the employer, a statement  
110 giving the name of each of the employer's employees  
111 who were paid for injury and the amounts so paid  
112 during the period covered by the statement.

**§23-2-5. Application; payment of premiums; payroll  
report; premiums; deposits; delinquency;  
default; reinstatement; payment of benefits;  
notice to employees; criminal provisions;  
penalties.**

1 (a) For the purpose of creating a workers' compensa-  
2 tion fund, each employer who is required to subscribe  
3 to the fund or who elects to subscribe to the fund shall  
4 pay premiums calculated as a percentage of the  
5 employer's payroll at the rate determined by the  
6 commissioner and then in effect. At the time each  
7 employer subscribes to the fund, the application  
8 required by the commissioner shall be filed and a  
9 premium deposit equal to the first quarter's estimated  
10 premium payment shall be remitted. The minimum  
11 quarterly premium to be paid by any employer shall be  
12 ten dollars.

13 (1) Thereafter, premiums shall be paid quarterly on  
14 or before the last day of the month following the end  
15 of the quarter, and shall be the prescribed percentage  
16 of the total earnings of all employees during the  
17 preceding quarter.

18 (2) At the time each premium is paid, every subscrib-  
19 ing employer shall make a payroll report to the  
20 commissioner for the preceding quarter. The report  
21 shall be on the form or forms prescribed by the

22 commissioner, and shall contain all information re-  
23 quired by the commissioner.

24 (3) After subscribing to the fund, each employer shall  
25 remit with each payroll report and premium payment,  
26 an amount calculated to be sufficient to maintain a  
27 premium deposit equal to the previous quarter's  
28 premium payment: *Provided*, That the commissioner  
29 may reduce the amount of the premium deposit required  
30 from seasonal employers for those quarters during  
31 which employment is significantly reduced. The pre-  
32 mium deposit shall be credited to the employer's account  
33 on the books of the commissioner and used to pay  
34 premiums and any other sums due the fund when an  
35 employer becomes delinquent.

36 (4) All premiums and premium deposits required to  
37 be paid by this chapter shall be paid by the employers  
38 to the commissioner, who shall maintain record of all  
39 sums so received. On and after the first day of October,  
40 one thousand nine hundred ninety-one, any such sum  
41 mailed to the commissioner shall be deemed to be  
42 received on the date the envelope transmitting it is  
43 postmarked by the United States postal service. All  
44 sums received by the commissioner shall be deposited  
45 in the state treasury to the credit of the workers'  
46 compensation division in the manner now prescribed by  
47 law.

48 (5) The commissioner may encourage employer efforts  
49 to create and maintain safe workplaces, to encourage  
50 loss prevention programs, and to encourage employer  
51 provided wellness programs, through the normal  
52 operation of the experience rating formula, seminars  
53 and other public presentations, the development of  
54 model safety programs and other initiatives as may be  
55 determined by the commissioner.

56 (b) Failure of an employer to timely pay premium, to  
57 timely file a payroll report, or to maintain an adequate  
58 premium deposit, shall cause the employer's account to  
59 become delinquent. No employer will be declared  
60 delinquent or be assessed any penalty therefor if the  
61 commissioner determines that such delinquency has

62 been caused by delays in the administration of the fund.  
63 The commissioner shall, in writing, within sixty days of  
64 the end of each quarter notify all delinquent employers  
65 of their failure to timely pay premiums, to timely file  
66 a payroll report, or to maintain an adequate premium  
67 deposit. The notification shall demand the filing of the  
68 delinquent payroll report and payment of delinquent  
69 premiums, and/or payment of an amount sufficient to  
70 maintain the premium deposit, before the end of the  
71 third month following the end of the preceding quarter.  
72 The notification shall also require payment of interest  
73 on the delinquent premium payment and/or premium  
74 deposit pursuant to section thirteen of this article.

75 (c) Whenever the commissioner notifies an employer  
76 of the delinquent status of his or her account, the  
77 notification shall explain the legal consequence of  
78 subsequent default by employers required to subscribe  
79 to the fund, and the effects of termination of any electing  
80 employer's account.

81 (d) Failure by the employer, who is required to  
82 subscribe to the fund and who fails to resolve his or her  
83 delinquency within the prescribed period, shall place  
84 the account in default and shall deprive such defaulting  
85 employer of the benefits and protection afforded by this  
86 chapter, including section six of this article, and he or  
87 she shall be liable as provided in section eight of this  
88 article. The defaulting employer's liability under said  
89 section shall be retroactive to twelve o'clock p.m., of the  
90 last day of the month following the end of the quarter  
91 for which the delinquency occurs. The commissioner  
92 shall notify the defaulting employer of the method by  
93 which the employer may be reinstated with the fund.  
94 The commissioner shall also notify the employees of such  
95 employer by written notice as hereinafter provided for  
96 in this section.

97 (e) Failure by any employer, who voluntarily elects to  
98 subscribe, to resolve his or her delinquency within the  
99 prescribed period shall automatically terminate the  
100 election of such employer to pay into the workers'  
101 compensation fund and shall deprive such delinquent  
102 employer of the benefits and protection afforded by this

103 chapter, including section six of this article, and he or  
104 she shall be liable as provided in section eight of this  
105 article. The defaulting employer's liability under said  
106 section shall be retroactive to twelve o'clock p.m., of the  
107 last day of the month following the end of the quarter  
108 for which the delinquency occurs.

109 (f) (1) Except as provided for in subdivision (3) of this  
110 subsection, any employer who is required to subscribe  
111 to the fund and who is in default on the effective date  
112 of this section or who subsequently defaults, and any  
113 employer who has elected to subscribe to the fund and  
114 whose account is terminated prior to the effective date  
115 of this section or whose account is subsequently termi-  
116 nated, shall be restored immediately to the benefits and  
117 protection of this chapter only upon the filing of all  
118 delinquent payroll and other reports required by the  
119 commissioner and payment into the fund of all unpaid  
120 premiums, an adequate premium deposit, and accrued  
121 interest. Interest shall be calculated as provided for by  
122 section thirteen of this article. In addition, for every  
123 defaulted or terminated employer whose default or  
124 termination lasts for two consecutive quarters or who  
125 has defaulted or been terminated for two quarters out  
126 of the preceding eight consecutive quarters, then when  
127 any such employer's application for reinstatement is  
128 filed or upon any such employer's restoration to the  
129 benefits and protection of this chapter, for the next eight  
130 quarters, including the quarter in which such restora-  
131 tion occurs, or when any such employer's application for  
132 reinstatement is filed, the employer shall pay premiums  
133 to the commissioner at a penalty rate. The applicable  
134 penalty premium rate shall be determined by first  
135 calculating the employer's premium under the provi-  
136 sions of section four of this article, but including any  
137 applicable experience modification, and then multiply-  
138 ing that premium by one hundred ten percent.

139 The commissioner shall not have the authority to  
140 waive either accrued interest or the imposition of the  
141 penalty premium rate. Any employer whose default or  
142 termination does not last for two consecutive quarters  
143 or who has not been in default two quarters out of the

144 preceding eight consecutive quarters shall not have a  
145 penalty premium rate imposed. The provisions of section  
146 seventeen of this article apply to any action or decision  
147 of the commissioner under this section. For purposes of  
148 section four of this article, the extra ten percent of  
149 premium constituting the penalty shall not be used in  
150 determining any entitlement to experience modification  
151 of the employer's premium rate for future years.

152 (2) The commissioner shall have the authority to  
153 restore a defaulted or terminated employer under a  
154 reinstatement agreement. Such reinstatement agree-  
155 ment shall require the payment in full of all premiums,  
156 premium deposits, past accrued interest and future  
157 interest calculated pursuant to the provisions of section  
158 thirteen of this article. The reinstatement agreement  
159 shall not permit any modification or waiver of the  
160 penalty premium rate provided for in subdivision (1) of  
161 this subsection. Notwithstanding the filing of a rein-  
162 statement agreement or the entering into of a reinstatement  
163 agreement, the commissioner is authorized to file  
164 a lien against the employer as provided for by section  
165 five-a of this article. In addition, entry into a repayment  
166 agreement is discretionary with the commissioner. Such  
167 discretion shall be exercised in keeping with the  
168 commissioner's fiduciary obligations to the workers'  
169 compensation fund. Should the commissioner decline to  
170 enter into a repayment agreement and should the  
171 employer not comply with the provisions of subdivision  
172 (1) of this subsection, then the commissioner may  
173 proceed with any of the collection efforts provided for  
174 by section five-a of this article or as otherwise provided  
175 for by this code. Applications for reinstatement shall:  
176 (A) Be made upon forms prescribed by the commis-  
177 sioner; (B) include a report of the gross payroll of the  
178 employer during the entire period of delinquency and  
179 default, which payroll information shall be certified by  
180 the employer or its authorized agent; and (C) include a  
181 payment equal to one half of one percent of the gross  
182 payroll during the period of delinquency and default but  
183 not to exceed the amount of the entire liability due and  
184 owing for the period of delinquency and default. An  
185 employer who applies for reinstatement shall be entitled

186 to the benefits and protection of this chapter on the day  
187 the application is received by the commissioner:  
188 *Provided*, That if the commissioner reinstates an  
189 employer subject to the terms of a repayment agree-  
190 ment, the subsequent failure of the employer to make  
191 scheduled payments or to pay accrued or future interest  
192 in accordance with the repayment agreement or to  
193 timely file current premiums within the month follow-  
194 ing the end of the quarter for which the report and  
195 payment are due, or to otherwise maintain its account  
196 in good standing or, if the repayment agreement does  
197 not require earlier restoration of the premium deposit,  
198 to restore the premium deposit to the required amount  
199 by the end of the repayment period shall cause the  
200 reinstatement application or the repayment agreement,  
201 or both, to be null, void and of no effect, and the  
202 employer shall be denied the benefits and protection of  
203 this chapter effective from the date that such employer's  
204 account originally became delinquent.

205 (3) Any employer who fails to maintain his or her  
206 account in good standing with regard to subsequent  
207 premiums and premium deposits prior to the final  
208 resolution of an application for reinstatement as  
209 provided for in subdivision (1) of this subsection shall  
210 cause the reinstatement application to be null, void and  
211 of no effect, and the employer shall be denied the  
212 benefits and protection of this chapter effective from the  
213 date that such employer's account originally became  
214 delinquent.

215 (4) Following any failure of an employer to comply  
216 with the provisions of a repayment agreement, the  
217 commissioner may then make and continue with any of  
218 the collection efforts provided for by this chapter or  
219 elsewhere in this code even if the employer files another  
220 reinstatement application.

221 (g) No employee of an employer required by this  
222 chapter to subscribe to the workers' compensation fund  
223 shall be denied benefits provided by this chapter  
224 because the employer failed to subscribe or because the  
225 employer's account is either delinquent or in default.

226 (h) (1) The provisions of this section shall not deprive  
227 any individual of any cause of action which has accrued  
228 as a result of an injury or death which occurred during  
229 any period of delinquency not resolved in accordance  
230 with the provisions of this article, or subsequent failure  
231 to comply with the terms of the repayment agreement.

232 (2) Upon withdrawal from the fund or termination of  
233 election of any employer, he or she shall be refunded the  
234 balance due him or her of his or her deposit, after  
235 deducting all amounts owed by him or her to the  
236 workers' compensation fund, and the commissioner shall  
237 notify the employees of such employer of said termina-  
238 tion in such manner as he or she may deem best and  
239 sufficient.

240 (3) Notice to employees in this section provided for  
241 shall be given by posting written notice that the  
242 employer is defaulted under the compensation law of  
243 West Virginia, and in the case of employers required by  
244 this chapter to subscribe and pay premiums to the fund,  
245 that the defaulted employer is liable to his or her  
246 employees for injury or death, both in workers' compen-  
247 sation benefits and in damages at common law or by  
248 statute; and in the case of employers not required by this  
249 chapter to subscribe and pay premiums to the fund, but  
250 voluntarily electing to do so as herein provided, that  
251 neither the employer nor the employees of such em-  
252 ployer are protected by said laws as to any injury or  
253 death sustained after the date specified in said notice.  
254 Such notice shall be in the form prescribed by the  
255 commissioner and shall be posted in a conspicuous place  
256 at the chief works of the employer, as the same appear  
257 in records of the commissioner. If said chief works of  
258 the employer cannot be found or identified, then said  
259 notices shall be posted at the front door of the courthouse  
260 of the county in which said chief works are located,  
261 according to the records in the commissioner's office.  
262 Any person who shall, prior to the reinstatement of said  
263 employer, as hereinbefore provided for, or prior to sixty  
264 days after the posting of said notice, whichever shall  
265 first occur, remove, deface, or render illegible said  
266 notice, shall be guilty of a misdemeanor, and, upon



267 conviction thereof, shall be fined not to exceed five  
268 hundred dollars, and said notice shall state this  
269 provision upon its face. The commissioner may require  
270 any sheriff, deputy sheriff, constable or other official of  
271 the state of West Virginia, who may be authorized to  
272 serve civil process, to post such notice and to make  
273 return thereof of the fact of such posting to the  
274 commissioner, and any failure of such officer to post any  
275 notice within ten days after he or she shall have received  
276 the same from the commissioner, without just cause or  
277 excuse, shall constitute a willful failure or refusal to  
278 perform a duty required of him or her by law within  
279 the meaning of section twenty-eight, article five, chapter  
280 sixty-one of this code. Any person actually injured by  
281 reason of such failure shall have an action against said  
282 official, and upon any official bond he or she may have  
283 given, for such damages as such person may actually  
284 have incurred, but not to exceed, in the case of any  
285 surety upon said bond, the amount of the penalty of said  
286 bond. Any official posting said notice as herein required  
287 shall be entitled to the same fee as is now or may  
288 hereafter be provided for the service of process in suits  
289 instituted in courts of record in the state of West  
290 Virginia, which fee shall be paid by the commissioner  
291 out of any funds at his or her disposal, but shall be  
292 charged by him or her against the account of the  
293 employer to whose delinquency such notice relates.

**§23-2-5a. Collection of premiums from defaulting em-  
ployers; interest and penalties; civil reme-  
dies; creation and enforcement of lien  
against employer and purchaser; duty of  
secretary of state to register liens; distraint  
powers; insolvency proceedings; secretary of  
state to withhold certificates of dissolution;  
injunctive relief; bond; attorney fees and  
costs.**

1 (a) The commissioner in the name of the state may  
2 commence a civil action against an employer who, after  
3 due notice, defaults in any payment required by this  
4 chapter. If judgment is against the employer, such  
5 employer shall pay the costs of the action. Civil action

6 under this section shall be given preference on the  
7 calendar of the court over all other civil actions. Upon  
8 prevailing in any such civil action, the commissioner  
9 shall be entitled to recover his or her attorneys' fees and  
10 costs of action from the employer.

11 (b) In addition to the foregoing provisions of this  
12 section, any payment, interest and penalty thereon due  
13 and unpaid under this chapter shall be a personal  
14 obligation of the employer immediately due and owing  
15 to the commissioner and shall, in addition thereto, be a  
16 lien enforceable against all the property of the employer:  
17 *Provided*, That no such lien shall be enforceable as  
18 against a purchaser (including a lien creditor) of real  
19 estate or personal property for a valuable consideration  
20 without notice, unless docketed as provided in section  
21 one, article ten-c, chapter thirty-eight of this code:  
22 *Provided, however*, That such lien may be enforced as  
23 other judgment liens are enforced through the provi-  
24 sions of chapter thirty-eight of this code and the same  
25 shall be deemed by the circuit court to be a judgment  
26 lien for this purpose.

27 (c) In addition to all other civil remedies prescribed  
28 herein the commissioner may in the name of the state,  
29 after giving appropriate notice as required by due  
30 process, distrain upon any personal property, including  
31 intangible property, of any employer delinquent for any  
32 payment, interest and penalty thereon. If the commis-  
33 sioner has good reason to believe that such property or  
34 a substantial portion thereof is about to be removed  
35 from the county in which it is situated, upon giving  
36 appropriate notice, either before or after the seizure, as  
37 is proper in the circumstances, he or she may likewise  
38 distrain in the name of the state before such delinquency  
39 occurs. For such purpose, the commissioner may require  
40 the services of a sheriff of any county in the state in  
41 levying such distress in the county in which the sheriff  
42 is an officer and in which such personal property is  
43 situated. A sheriff so collecting any payment, interest  
44 and penalty thereon shall be entitled to such compen-  
45 sation as is provided by law for his or her services in  
46 the levy and enforcement of executions. Upon prevailing

47 in any distraint action, the commissioner shall be  
48 entitled to recover his or her attorneys' fees and costs  
49 of action from the employer.

50 (d) In case a business subject to the payments, interest  
51 and penalties thereon imposed under this chapter shall  
52 be operated in connection with a receivership or  
53 insolvency proceeding in any state court in this state, the  
54 court under whose direction such business is operated  
55 shall, by the entry of a proper order or decree in the  
56 cause, make provisions, so far as the assets in admin-  
57 istration will permit, for the regular payment of such  
58 payments, interest and penalties as the same become  
59 due.

60 (e) The secretary of state of this state shall withhold  
61 the issuance of any certificate of dissolution or withdra-  
62 wal in the case of any corporation organized under the  
63 laws of this state or organized under the laws of any  
64 other state and admitted to do business in this state,  
65 until notified by the commissioner that all payments,  
66 interest and penalties thereon against any such corpo-  
67 ration which is an employer under this chapter have  
68 been paid or that provision satisfactory to the commis-  
69 sioner has been made for payment.

70 (f) In any case when an employer required to sub-  
71 scribe to the fund defaults in payments of premium,  
72 premium deposits, or interest thereon, for as many as  
73 two calendar quarters, which quarters need not be  
74 consecutive, and remains in default after due notice, and  
75 the commissioner has been unable to collect such  
76 payments by any of the other civil remedies prescribed  
77 herein, the commissioner may bring action in the circuit  
78 court of Kanawha county to enjoin such employer from  
79 continuing to carry on the business in which such  
80 liability was incurred: *Provided*, That the commissioner  
81 may as an alternative to this action require such  
82 delinquent employer to file a bond in the form pres-  
83 cribed by the commissioner with satisfactory surety in  
84 an amount not less than fifty percent more than the  
85 payments, interest and penalties due.

§23-2-5b. Legislative purpose; application for settlement; reinstatement; amount of settlement; when settlement void; notification of rights.

1 The Legislature hereby declares that it is the purpose  
2 of this section to provide any employer who may, as of  
3 the effective date of this section, be in default in any  
4 payment due under the provisions in this article an  
5 opportunity to settle the amount of the default in  
6 accordance with the provisions hereinafter set forth. For  
7 purposes of this section, the term "default" shall apply  
8 to any employer who has failed to subscribe or pay  
9 premiums to the workers' compensation fund in accor-  
10 dance with the provisions of this chapter.

11 (a) On or before the first day of February, one  
12 thousand nine hundred ninety-four, any employer who  
13 may qualify under this section shall apply to the  
14 commissioner for a settlement of the amount of default.  
15 Such application shall: (1) Be made on a form prescribed  
16 by the commissioner; (2) include the gross payroll of the  
17 employer during the entire period of delinquency and  
18 default, which payroll information shall be certified by  
19 the employer or its authorized agent; and (3) include a  
20 payment equal to one half of one percent of the gross  
21 payroll during the period of delinquency and default,  
22 but not to exceed the amount of the entire liability due  
23 and owing for the period of delinquency and default.

24 (b) Notwithstanding other provisions of this chapter  
25 to the contrary, upon timely receipt of the application  
26 prescribed in subdivision (a) of this section, the em-  
27 ployer shall be entitled to the benefits and protections  
28 of this chapter: *Provided*, That such entitlement shall  
29 not affect any cause of action which has accrued against  
30 the employer as a result of an injury sustained during  
31 any period of default prior to the date of the application:  
32 *Provided, however*, That the subsequent failure of the  
33 employer to make scheduled payments or to pay accrued  
34 or future interest in accordance with any repayment  
35 agreement or to timely file current premiums within the  
36 month following the end of the quarter for which the  
37 report and payment are due, or to otherwise maintain  
38 its account in good standing or, if a repayment agree-

39 ment does not require earlier restoration of the pre-  
40 mium deposit, to restore the premium deposit to the  
41 required amount by the end of any repayment period  
42 shall cause the application or any repayment agreement,  
43 or both, to be null, void and of no effect, and the  
44 employer shall be denied the benefits and protection of  
45 this chapter effective from the date that such employer's  
46 account originally became delinquent.

47 (c) After the commissioner shall have received the  
48 application of an employer as prescribed herein, the  
49 commissioner and the employer or its authorized agent  
50 shall agree, in writing, on or before the first day of July,  
51 one thousand nine hundred ninety-four, to settle the  
52 default in an amount which shall include all delinquent  
53 premium payments, plus interest, compounded monthly,  
54 at the rate of nine percent per annum. The commis-  
55 sioner may authorize payment of the amount set forth  
56 in the agreement on a payment schedule, which period  
57 shall not exceed three years from the date of the  
58 execution of the agreement. The agreement shall set  
59 forth that the employer shall be in default if any  
60 payment shall not be received by the commissioner  
61 within fifteen days of the due date thereof.

62 (d) If the employer shall fail to pay timely current  
63 premiums in accordance with the provisions of this  
64 chapter or if the employer shall default upon any  
65 payment set forth under the terms of the agreement,  
66 such application or agreement, or both, shall be null,  
67 void and of no effect and the commissioner shall have  
68 the authority to proceed in accordance with the provi-  
69 sions of this chapter. Current premiums shall be timely  
70 paid when they are paid within the month following the  
71 end of the quarter for which the reported payment is  
72 due.

73 (e) The commissioner shall notify in writing, by the  
74 first day of January, one thousand nine hundred ninety-  
75 four, all employers, who are in default as indicated by  
76 the records of the commissioner, of the employer's right  
77 to apply for a settlement in accordance with the  
78 provisions of this section. The commissioner may also  
79 take additional steps, as deemed appropriate, to notify

80 other employers of the rights set forth herein. The  
81 written notice of the commissioner shall include the  
82 form required for application and the commissioner  
83 shall make such form available to other employers.

**§23-2-5c. Statute of limitations; effective date for new  
payments; previous payments due not  
affected.**

1 (1) For payments due after the effective date of this  
2 section, every action or process to collect any premium,  
3 premium deposit, interest or penalty due from an  
4 employer pursuant to this article by the commissioner  
5 shall be brought or issued within five years next after  
6 the date on which the employer is required by the  
7 section imposing the premium, premium deposit,  
8 interest or penalty to file a report and pay the amount  
9 due thereunder. The limitation provided by this section  
10 shall likewise apply to enforcement of the lien, if any,  
11 securing the payment of such premium, premium  
12 deposit, interest or penalty, but shall not apply in event  
13 of fraud or in event the employer wholly fails to file the  
14 report required by the section imposing the premium,  
15 premium deposit, interest or penalty. For payments that  
16 were due prior to the effective date of this section, there  
17 shall continue to be no limitation on when actions or  
18 processes may be brought or issued.

**§23-2-5d. Uncollectible receivables; write-offs.**

1 The commissioner, with the approval of the attorney  
2 general, may write-off any uncollected receivable due  
3 under the provisions of this article which the commis-  
4 sioner and the attorney general deem to be uncollectible.

**§23-2-15. Liabilities of successor employer; waiver of  
payment by commissioner; assignment of  
predecessor employer's premium rate to  
successor.**

1 (a) Notwithstanding any provisions of section five-a of  
2 this article to the contrary, in the event that a new  
3 employer acquires by sale or other transfer or assumes  
4 all or substantially all of a predecessor employer's actual  
5 business, business assets, customers, clients, contracts,

6 operations, stock of goods, equipment or substantially all  
7 of its employees, then any liens for payments owed to  
8 the commissioner for premiums, premium deposits,  
9 interest or claims losses by the predecessor employer or  
10 any liens held by the commissioner against the prede-  
11 cessor employer's property shall be extended to the  
12 assets acquired as the result of the sale or transfer by  
13 the new employer and shall be enforceable against such  
14 assets by the commissioner to the same extent as  
15 provided for the enforcement of liens against the  
16 predecessor employer pursuant to said section. As used  
17 in this section, the term "assets" is defined as provided  
18 in section fourteen of this article. The foregoing  
19 provisions are expressly intended to impose upon such  
20 new employers the duty of obtaining, prior to the date  
21 of such acquisition, verification from the commissioner  
22 that the predecessor employer's account with the  
23 commissioner is in good standing.

24 (b) At any time prior to or following the acquisition  
25 described in subsection (a) of this section, the buyer or  
26 other recipient may file a certified petition with the  
27 commissioner requesting that the commissioner waive  
28 the payment by the buyer or other recipient of premi-  
29 ums, premium deposits, interest and imposition of the  
30 modified rate of premiums attributable to the predeces-  
31 sor employer, or any combination thereof. The commis-  
32 sioner shall review the petition by considering the six  
33 factors set forth below:

34 (1) The exact nature of the default;

35 (2) The amount owed to the commissioner;

36 (3) The solvency of the fund;

37 (4) The financial condition of the buyer or other  
38 recipient;

39 (5) The equities exhibited towards the fund by the  
40 buyer or other recipient during the acquisition process;  
41 and

42 (6) The potential economic impact upon the state and  
43 the specific geographic area in which the buyer or other

44 recipient is to be or is located, if the acquisition were  
45 not to occur.

46 Unless requested by a party or by the commissioner,  
47 no hearing need be held on the petition. However, any  
48 decision made by the commissioner on the petition shall  
49 be in writing and shall include appropriate findings of  
50 fact and conclusions of law. Such decision shall be  
51 effective ten days following notice to the public of the  
52 decision unless an objection is filed in the manner herein  
53 provided. Such notice shall be given by the commissioner's  
54 publication of a Class I legal advertisement which  
55 complies with the provisions of article three, chapter  
56 fifty-nine of this code. The publication shall include a  
57 summary of the decision and a statement advising that  
58 any person objecting to the decision must file, within ten  
59 days after publication of the notice, a verified response  
60 with the commissioner setting forth the objection and  
61 the basis therefor. The publication area shall be  
62 Kanawha county, West Virginia. If any such objection  
63 is filed, the commissioner shall hold an administrative  
64 hearing, conducted pursuant to article five, chapter  
65 twenty-nine-a of this code, within fifteen days of  
66 receiving the response unless the buyer or other  
67 recipient consents to a later hearing. Nothing in this  
68 subsection shall be construed to be applicable to the  
69 seller or other transferor or to affect in any way a  
70 proceeding under sections five and five-a of this article.

71 (c) In the factual situations set forth in subsection (a)  
72 of this section, if the predecessor's modified rate of  
73 premium, as calculated in accordance with section four  
74 of this article, is greater than the manual rate of  
75 premium, as calculated in accordance with said section,  
76 for other employers in the same class or group, then the  
77 new employer shall also assume the predecessor employ-  
78 er's modified rates for the payment of premiums as  
79 determined under sections four and five of this article  
80 until sufficient time has elapsed for the new employer's  
81 experience record to be combined with the experience  
82 record of the predecessor employer.

**§23-2-17. Employer right to hearing; content of petition;  
appeal.**



1 Notwithstanding any provision in this chapter to the  
2 contrary and notwithstanding any provision in section  
3 five, article five, chapter twenty-nine-a of this code to  
4 the contrary, in any situation where an employer objects  
5 to a decision or action of the commissioner made under  
6 the provisions of this article, then such employer shall  
7 be entitled to file a petition demanding a hearing upon  
8 such decision or action which petition must be filed  
9 within thirty days of the employer's receipt of notice of  
10 the disputed commissioner's decision or action or, in the  
11 absence of such receipt, within sixty days of the date of  
12 the commissioner's making such disputed decision or  
13 taking such disputed action, such time limitations being  
14 hereby declared to be a condition of the right to litigate  
15 such decision or action and hence jurisdictional.

16 The employer's petition shall clearly identify the  
17 decision or action disputed and the bases upon which the  
18 employer disputes the decision or action. Upon receipt  
19 of such a petition, the commissioner shall schedule a  
20 hearing which shall be conducted in accordance with the  
21 provisions of article five, chapter twenty-nine-a of this  
22 code. An appeal from a final decision of the commis-  
23 sioner shall be taken in accord with the provisions of  
24 articles five and six of said chapter: *Provided*, That all  
25 such appeals shall be taken to the circuit court of  
26 Kanawha county.

#### ARTICLE 2B. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS.

##### §23-2B-1. Occupational safety and health activities; voluntary compliance; consultative services.

1 In order to carry out the purposes of this chapter and  
2 to encourage voluntary compliance with occupational  
3 safety and health laws, regulations and standards and  
4 to promote more effective workplace health and safety  
5 programs, the commissioner acting in conjunction with  
6 the performance council created pursuant to section one,  
7 article three, chapter twenty-one-a of this code, shall:

8 (a) Develop greater knowledge and interest in the  
9 causes and prevention of industrial accidents, occupa-  
10 tional diseases and related subjects through:

11 (1) Research, conferences, lectures and the use of  
12 public communications media;

13 (2) The collection and dissemination of accident and  
14 disease statistics; and

15 (3) The publication and distribution of training and  
16 accident prevention materials, including audio and  
17 visual aids;

18 (b) Provide consultative services for employers on  
19 safety and health matters and prescribe procedures  
20 which will permit any employer to request a special  
21 inspection or investigation, focused on specific problems  
22 or hazards in the place of employment of the employer  
23 or to request assistance in developing a plan to correct  
24 such problems or hazards, which will not directly result  
25 in a citation and civil penalty; and

26 (c) Place emphasis, in the research, education and  
27 consultation program, on development of a model for  
28 providing services to groups of small employers in  
29 particular industries and their employees and for all  
30 employers whose experience modification factor for rate  
31 setting purposes is in excess of the criteria established  
32 by the compensation programs performance council.

**§23-2B-2. Mandatory programs; safety committees;  
requirements; rules; exceptions.**

1 (a) Based upon and to the extent authorized by criteria  
2 established by the compensation programs performance  
3 council, the commissioner is authorized to conduct  
4 special inspections or investigations focused on specific  
5 problems or hazards in the work place with or without  
6 the agreement of the employer. The commissioner shall  
7 issue a report on his or her findings and shall furnish  
8 a copy of the report to the employer and to any  
9 bargaining unit representing the employees of the  
10 employer. The commissioner may share information  
11 obtained or developed pursuant to this article with other  
12 governmental agencies.

13 (b) For any employer whose experience modification  
14 factor exceeds the criteria established by the compen-  
15 sation programs performance council, the commissioner

16 may require the employer to establish a safety commit-  
17 tee composed of representatives of the employer and the  
18 employees of the employer.

19 (c) In carrying out the provisions of this article, the  
20 commissioner and the compensation programs perfor-  
21 mance council shall promulgate rules which shall  
22 include, but are not limited to, the following provisions:

23 (1) Prescribing the membership of the committees,  
24 training, frequency of meetings, record keeping and  
25 compensation of employee representatives on safety  
26 committees; and

27 (2) Prescribing the duties and functions of safety  
28 committees which include, but are not limited to:

29 (A) Establishing procedures for workplace safety  
30 inspections; and for investigating job-related accidents,  
31 illnesses and deaths; and

32 (B) Evaluating accident and illness prevention  
33 programs.

34 (d) An employer that is a member of a multi-employer  
35 group operating under a collective bargaining agree-  
36 ment that contains provisions regulating the formation  
37 and operation of a safety committee that meets or  
38 exceeds the minimum requirements of this section shall  
39 be considered to have met the requirements of this  
40 section.

41 (e) It is not the purpose of this article to either  
42 supercede the federal Occupational Health and Safety  
43 Act program, federal Mine Safety and Health Act  
44 program or to create a state counterpart to this  
45 program.

**§23-2B-3. Premium rate credits; qualified loss manage-  
ment program; loss management firms;  
penalties; rules.**

1 (a) The commissioner, in conjunction with the compen-  
2 sation programs performance council, is authorized to  
3 establish by rule a premium credit program for certain  
4 employers. The program shall be applicable solely to  
5 regular subscribers to the workers' compensation fund

6 and not to self-insurers. Participation in any premium  
7 credit program shall be voluntary and no employer shall  
8 be required to participate.

9 (b) The program shall apply a prospective credit to the  
10 premium rate of a subscribing employer who partici-  
11 pates in a qualified loss management program. The  
12 prospective credit shall be given for a period of up to  
13 three years, provided that the employer remains in the  
14 program for a corresponding period of time.

15 (c) The rule shall specify the requirements of a  
16 qualified loss management program and shall include a  
17 requirement that a recognized loss management firm  
18 participate in the program. A loss management firm  
19 shall be recognized if it has demonstrated an ability to  
20 significantly reduce workers' compensation losses for its  
21 client employers by implementing a loss control man-  
22 agement program. The amount of credit against  
23 premium rates that may be allowed by the commis-  
24 sioner shall vary from firm to firm and shall be  
25 primarily determined by the loss reduction success  
26 experienced by all of the subscribing employers of the  
27 sponsoring loss management firm over a period of time  
28 to be determined by the commissioner.

29 (d) A credit shall be applied to the employer's  
30 premium rate for up to three years. The amount of the  
31 credit applied to the first year is based on the credit  
32 factor assigned to the loss management firm on the date  
33 the employer subscribes to the program. The amount of  
34 the credit applied to the second and third years shall be  
35 based on the credit factor assigned to the loss manage-  
36 ment firm and in effect on each first day of July of the  
37 pertinent year: *Provided*, That the applicable credit is  
38 halved in the third year.

39 (e) The employer may terminate participation in the  
40 program upon three years of continuous participation in  
41 the program without penalty. Sooner termination may  
42 result in a penalty being applied to the employer's  
43 premium rate.

44 (f) An employer who has subscribed to an existing  
45 program of a qualified loss management firm prior to

46 the effective date of this section shall be subject to a  
47 reduction in credit as follows:

48 (1) Participation for one year or less shall result in  
49 credit for the full three years;

50 (2) Participation for more than one year but less than  
51 two years shall result in a credit for two years;

52 (3) Participation for two years or more but less than  
53 three years shall result in a credit for one year; and

54 (4) Participation for three years or more shall result  
55 in no credit.

56 (g) This section shall not become effective until the  
57 commissioner, in conjunction with the compensation  
58 programs performance council, promulgates an approp-  
59 riate rule to implement the section's provisions.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

**§23-4-1e. Temporary total disability benefits not to be paid for periods of penitentiary or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while incarcerated.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, no person shall be jurisdictionally entitled to  
3 temporary total disability benefits for that period of  
4 time in excess of three days during which such person  
5 is incarcerated in a penitentiary or jail: *Provided*, That  
6 incarceration shall not affect the claimant's eligibility  
7 for payment of expenses: *Provided, however*, That this  
8 subsection is applicable only to injuries and diseases  
9 incurred prior to any period of incarceration. Upon  
10 release from confinement, the payment of benefits for  
11 the remaining period of temporary total disability shall  
12 be made if justified by the evidence and authorized by  
13 order of the commissioner.

14 (b) Notwithstanding any provision of this code to the  
15 contrary, no person incarcerated in a penitentiary or jail  
16 who suffers injury or a disease in the course of and  
17 resulting from his or her work during such period of  
18 incarceration which work is imposed by the administra-

19 tion of the penitentiary or jail and is not suffered during  
 20 such person's usual employment with his or her usual  
 21 employer when not incarcerated shall receive benefits  
 22 under the provisions of this chapter for such injury or  
 23 disease.

**§23-4-1f. Certain psychiatric injuries and diseases not compensable.**

1 For the purposes of this chapter, no alleged injury or  
 2 disease shall be recognized as a compensable injury or  
 3 disease which was solely caused by nonphysical means  
 4 and which did not result in any physical injury or  
 5 disease to the person claiming benefits. It is the purpose  
 6 of this section to clarify that so-called mental-mental  
 7 claims are not compensable under this chapter.

**§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.**

1 (a) The commissioner shall establish and alter from  
 2 time to time as he or she may determine to be appropriate a schedule of the maximum reasonable amounts to  
 3 be paid to chiropractic physicians, medical physicians,  
 4 osteopathic physicians, podiatrists, optometrists, vocational rehabilitation specialists, pharmacists, ophthalmologists and others practicing medicine and surgery,  
 5 surgeons, hospitals or other persons, firms or corporations for the rendering of treatment or services to  
 6 injured employees under this chapter. The commissioner  
 7 also, on the first day of each regular session and also  
 8 from time to time, as the commissioner may consider

13 appropriate, shall submit the schedule, with any  
14 changes thereto, to the Legislature. The promulgation of  
15 the schedule is not subject to the legislative rule-making  
16 review procedures established in sections nine through  
17 sixteen, article three, chapter twenty-nine-a of this code.

18 The commissioner shall disburse and pay from the  
19 fund for such personal injuries to such employees as may  
20 be entitled thereto hereunder as follows:

21 (1) Such sums for medicines, medical, surgical, dental  
22 and hospital treatment or services, crutches, artificial  
23 limbs and such other and additional approved mechanical  
24 appliances and devices as may be reasonably  
25 required. The commissioner shall determine that which  
26 is reasonably required within the meaning of this  
27 section in accordance with the guidelines developed by  
28 the health care advisory panel pursuant to section three-  
29 b of this article: *Provided*, That nothing herein shall  
30 prevent the implementation of guidelines applicable to  
31 a particular type of treatment or service or to a  
32 particular type of injury before guidelines have been  
33 developed for other types of treatment or services or  
34 injuries: *Provided, however*, That any guidelines for  
35 utilization review which are developed in addition to the  
36 guidelines provided for in said section may be utilized  
37 by the commissioner until superseded by guidelines  
38 developed by the health care advisory panel pursuant to  
39 said section. Each health care provider who seeks to  
40 provide services or treatment which are not within any  
41 such guideline shall submit to the commissioner specific  
42 justification for the need for such additional services in  
43 the particular case and the commissioner shall have the  
44 justification reviewed by a health care professional  
45 before authorizing any such additional services. The  
46 commissioner is authorized to enter into preferred  
47 provider agreements.

48 (2) Payment for such medicine, medical, surgical,  
49 dental and hospital treatment or services, crutches,  
50 artificial limbs and such other and additional approved  
51 mechanical appliances and devices authorized under  
52 this subdivision may be made to the injured employee  
53 or to the person, firm or corporation who or which has

54 rendered such treatment or furnished any of the items  
55 specified above, or who has advanced payment for same,  
56 as the commissioner may deem proper, but no such  
57 payments or disbursements shall be made or awarded  
58 by the commissioner unless duly verified statements on  
59 forms prescribed by the commissioner shall be filed  
60 with the commissioner within two years after the  
61 cessation of such treatment or the delivery of such  
62 appliances: *Provided*, That no payment hereunder shall  
63 be made unless such verified statement shows no charge  
64 for or with respect to such treatment or for or with  
65 respect to any of the items specified above has been or  
66 will be made against the injured employee or any other  
67 person, firm or corporation, and when an employee  
68 covered under the provisions of this chapter is injured  
69 in the course of and as a result of his or her employment  
70 and is accepted for medical, surgical, dental or hospital  
71 treatment or services or any mechanical appliances and  
72 devices, the person, firm or corporation rendering such  
73 treatment is hereby prohibited from making any charge  
74 or charges therefor or with respect thereto against the  
75 injured employee or any other person, firm or corpora-  
76 tion which would result in a total charge for the  
77 treatment rendered in excess of the maximum amount  
78 set forth therefor in the commissioner's schedule  
79 established as aforesaid.

80 (b) No chiropractic physician, medical physician,  
81 osteopathic physician, podiatrist or others practicing  
82 medicine or surgery (collectively and individually  
83 referred to hereinafter as "practitioner" or "practition-  
84 ers") shall refer his or her patients to the practitioner  
85 himself or herself or to a supplier of mechanical  
86 appliances or devices owned in whole or in part by the  
87 practitioner, the practitioner's partnership or profes-  
88 sional corporation, or a member of the practitioner's  
89 immediate family for the purchase or rental of any  
90 mechanical appliances or devices which the practitioner  
91 has prescribed or recommended to such patient except  
92 upon the terms prescribed by this section. Examples of  
93 mechanical appliances or devices are described as  
94 follows, but these examples are described for illustrative  
95 purposes only and are not intended to limit the range



96 of items included by this phrase: Hearing aids; crutches;  
97 artificial limbs; oxygen concentrators; and TENS units.  
98 For the purposes of this subsection, the term "practi-  
99 tioner" shall include natural persons, partnerships and  
100 professional corporations.

101 (1) In order to avoid the bar of this subdivision, a  
102 practitioner shall first disclose to his or her patient the  
103 ownership interest of the practitioner, or of the practi-  
104 tioner's partnership or professional corporation, or of a  
105 member of the practitioner's immediate family in the  
106 entity which would sell or rent the mechanical appliance  
107 or device to the patient. If the practitioner would sell  
108 or rent the mechanical appliance or device as part of his  
109 or her practice and not as a separate legal entity, the  
110 practitioner shall disclose this fact to the patient. These  
111 disclosures must be delivered in writing to the patient.

112 (2) The commissioner may include in any rules  
113 promulgated to implement this section a requirement  
114 that the written notice disclose to the patient that he or  
115 she is free to use any lawful supplier of the mechanical  
116 appliance or device prescribed or recommended and  
117 that other suppliers may offer the mechanical appliance  
118 or device for less cost but of equal or better quality  
119 elsewhere and that the patient is encouraged to compar-  
120 ison shop. The commissioner's rule may also provide for  
121 a differing level of reimbursement to the supplier if the  
122 supplier is the practitioner himself or herself or if the  
123 supplier is owned in whole or in part by the practitioner,  
124 the practitioner's partnership or professional corpora-  
125 tion or a member of the practitioner's immediate family  
126 as compared to the reimbursement of a supplier who is  
127 wholly independent from the practitioner.

128 (3) Failure by a practitioner to comply with the  
129 provisions of this subsection shall cause the practitioner  
130 to forfeit his, her or its right to reimbursement for the  
131 services rendered by the practitioner to the patient and,  
132 if any such services have previously been reimbursed,  
133 the commissioner shall either seek recovery of such  
134 funds by any lawful means or by deducting such  
135 amounts from future payments to the practitioner on  
136 account of services rendered to the same patient or to

137 other claimants of the workers' compensation fund. In  
138 addition, failure by a practitioner to comply with the  
139 provisions of this subsection shall also result in the  
140 denial of payment to the supplier of the mechanical  
141 appliance or device if that supplier is one which is  
142 owned in whole or in part by the practitioner, the  
143 practitioner's partnership or professional corporation, or  
144 a member of the practitioner's immediate family. If  
145 such supplier has already been reimbursed for the cost  
146 of the pertinent mechanical appliance or device, then the  
147 commissioner shall either seek recovery of such funds  
148 by any lawful means or by deducting such amounts from  
149 future payments to the supplier on account of goods  
150 delivered to the same patient or to other claimants of  
151 the workers' compensation fund.

152 (c) No employer shall enter into any contracts with  
153 any hospital, its physicians, officers, agents or employees  
154 to render medical, dental or hospital service or to give  
155 medical or surgical attention therein to any employee  
156 for injury compensable within the purview of this  
157 chapter, and no employer shall permit or require any  
158 employee to contribute, directly or indirectly, to any  
159 fund for the payment of such medical, surgical, dental  
160 or hospital service within such hospital for such  
161 compensable injury. Any employer violating this section  
162 shall be liable in damages to the employer's employees  
163 as provided in section eight, article two of this chapter,  
164 and any employer or hospital or agent or employee  
165 thereof violating the provisions of this section shall be  
166 guilty of a misdemeanor, and, upon conviction thereof,  
167 shall be punished by a fine not less than one hundred  
168 dollars nor more than one thousand dollars or by  
169 imprisonment not exceeding one year, or both: *Provided,*  
170 *That the foregoing provisions of this subsection shall not*  
171 *be deemed to prohibit an employer from participating*  
172 *in a preferred provider organization or program or a*  
173 *health maintenance organization or other medical cost*  
174 *containment relationship with the providers of medical,*  
175 *hospital or other health care: *Provided, however,* That*  
176 *nothing in this section shall be deemed to restrict the*  
177 *right of a claimant to select a health care provider for*  
178 *treatment of a compensable injury or disease.*

179 (d) When an injury has been reported to the commis-  
180 sioner by the employer without protest, the commis-  
181 sioner may pay, or order an employer who or which  
182 made the election and who or which received the  
183 permission mentioned in section nine, article two of this  
184 chapter to pay, within the maximum amount provided  
185 by schedule established by the commissioner as afore-  
186 said, bills for medical or hospital services without  
187 requiring the injured employee to file an application for  
188 benefits.

189 (e) The commissioner shall provide for the replace-  
190 ment of artificial limbs, crutches, hearing aids, eye-  
191 glasses and all other mechanical appliances provided in  
192 accordance with this section which later wear out, or  
193 which later need to be refitted because of the progres-  
194 sion of the injury which caused the same to be originally  
195 furnished, or which are broken in the course of and as  
196 a result of the employee's employment. The fund or self-  
197 insured employer shall pay for these devices, when  
198 needed, notwithstanding any time limits provided by  
199 law.

200 (f) No payment shall be made to a health care provider  
201 who is suspended or terminated under the terms of  
202 section three-c of this article except as provided in  
203 subsection (c) of said section.

204 (g) The commissioner is authorized to engage in and  
205 contract for medical cost containment programs,  
206 medical case management programs and utilization  
207 review programs. Payments for these programs shall be  
208 made from the superceded reserve of the surplus fund.  
209 Any order issued pursuant to any such program shall  
210 be interlocutory in nature until an objecting party has  
211 exhausted all review processes provided for by the  
212 commissioner.

213 (h) Notwithstanding the foregoing, the commissioner  
214 may establish fee schedules, make payments and take  
215 other actions required or allowed pursuant to article  
216 twenty-nine-d, chapter sixteen of this code.

**§23-4-3a. Wrongfully seeking payment for services or  
supplies; criminal penalties; restitution.**

1 (a) If any person who is a health care provider shall:

2 (1) Knowingly, and with intent to defraud, secure or  
3 attempt to secure payment from the workers' compen-  
4 sation fund or a self-insured employer for services or  
5 supplies when such person is not entitled to such  
6 payment or is entitled to some lesser amount of  
7 payment; or

8 (2) Knowingly make any charge or charges against  
9 any injured employee or any other person, firm or  
10 corporation which would result in a total charge for the  
11 treatment or service rendered in excess of the maximum  
12 amount set forth therefor in the commissioner's schedule  
13 of maximum reasonable amounts to be paid for such  
14 treatment or services issued pursuant to subsection (a),  
15 section three of this article, then in either case, such  
16 person shall be guilty of a felony, and, upon conviction  
17 thereof, shall be fined not more than ten thousand  
18 dollars, or imprisoned not more than two years, or both  
19 fined and imprisoned. In addition to any other penalty  
20 imposed, the court shall order any person convicted  
21 under this section to make full restitution of all moneys  
22 paid by the commissioner, a self-insured employer,  
23 injured employee or other person as the result of the  
24 violation of this section.

25 (b) Any person who is a health care provider who fails,  
26 in violation of subsection (e), section three-c of this  
27 article, to post a notice, in the form required by the  
28 commissioner, in the provider's public waiting area that  
29 the provider cannot accept any patient whose treatment  
30 or other services or supplies would ordinarily be paid  
31 for from the workers' compensation fund unless such  
32 patient consents, in writing, prior to the provision of  
33 such treatment or other services or supplies, to make  
34 payment for that treatment or other services or supplies  
35 himself or herself, shall be guilty of a misdemeanor,  
36 and, upon conviction thereof, shall be fined one thousand  
37 dollars.

38 (c) Any person who is a health care provider, who is  
39 suspended or terminated under section three-c of this  
40 article and, who intentionally attempts to collect any

41 sum of money from an injured employee who was not,  
42 prior to the provision of any treatment or other services  
43 or supplies, provided with the notice required by  
44 subsection (c) of said section, shall be guilty of a  
45 misdemeanor, and, upon conviction thereof, shall be  
46 fined not more than ten thousand dollars, or imprisoned  
47 in the county jail not more than twelve months, or both  
48 fined and imprisoned.

49 (d) For the purposes of this section, the term "person  
50 who is a health care provider" shall mean any person  
51 who has rendered, or who represents that he has  
52 rendered, any treatment to an injured employee under  
53 this chapter, or any person who has supplied, or who  
54 represents that he has supplied, any medication or any  
55 crutches, artificial limbs and other mechanical applian-  
56 ces and devices for such injured employee. The term  
57 shall include, but not be limited to, persons practicing  
58 medicine and surgery, podiatry, dentistry, nursing,  
59 pharmacy, optometry, osteopathic medicine and  
60 surgery, chiropractic, physical therapy, psychology,  
61 radiologic technology, occupational therapy or voca-  
62 tional rehabilitation, and shall also include hospitals,  
63 professional corporations and other corporations, firms  
64 and business entities.

65 (e) Any person convicted under the provisions of this  
66 section shall, from and after such conviction, be barred  
67 from providing future services or supplies to injured  
68 employees under this chapter and shall cease to receive  
69 payment for such services or supplies.

**§23-4-3c. Suspension or termination of providers of health care.**

1 (a) The commissioner may suspend for up to one year  
2 or terminate the right of any health care provider,  
3 including a provider of rehabilitation services within the  
4 meaning of section nine of this article, to obtain payment  
5 for services rendered to injured employees:

6 (1) If the commissioner finds that the health care  
7 provider is regularly providing excessive, medically  
8 unreasonable or unethical care to injured employees;

9 (2) If the commissioner finds that a health care  
10 provider is attempting to make any charge or charges  
11 against the injured employee or any other person, firm  
12 or corporation which would result in a total charge for  
13 any treatment rendered in excess of the maximum  
14 amount set by the commissioner, in violation of section  
15 three of this article;

16 (3) If the commissioner determines that the health  
17 care provider has had his or her license to practice  
18 suspended or terminated by the appropriate authority  
19 in this state or in another state; or

20 (4) If the commissioner determines that the health  
21 care provider has been convicted of any crime in  
22 relation to his or her practice.

23 The commissioner shall consult with medical experts,  
24 including the health care advisory panel established  
25 pursuant to section three-b of this article, for purposes  
26 of determining whether a health care provider should  
27 be suspended or terminated pursuant to this section.

28 (b) Upon the commissioner determining that there is  
29 probable cause to believe that a health care provider  
30 should be suspended or terminated pursuant to this  
31 section, the commissioner shall provide such health care  
32 provider with written notice which shall state the nature  
33 of the charges against the health care provider and the  
34 time and place at which such health care provider shall  
35 appear to show cause why the health care provider's  
36 right to receive payment under this chapter should not  
37 be suspended or terminated, at which time and place  
38 such health care provider shall be afforded an opportu-  
39 nity to review the commissioner's evidence and to cross-  
40 examine the commissioner's witnesses and also afforded  
41 the opportunity to present testimony and enter evidence  
42 in support of its position. The hearing shall be conducted  
43 in accordance with the provisions of article five, chapter  
44 twenty-nine-a of this code. The hearing may be con-  
45 ducted by the commissioner or a hearing officer  
46 appointed by the commissioner. The commissioner or  
47 hearing officer shall have the power to subpoena  
48 witnesses, papers, records, documents and other data

49 and things in connection with the proceeding hereunder  
50 and to administer oaths or affirmations in any such  
51 hearing. If, after reviewing the record of such hearing,  
52 the commissioner determines that the right of such  
53 health care provider to obtain payment under this  
54 article should be suspended for a specified period of  
55 time or should be terminated, the commissioner shall  
56 issue a final order suspending or terminating the right  
57 of such health care provider to obtain payment for  
58 services under this article. Any health care provider so  
59 suspended or terminated shall be notified in writing and  
60 the notice shall specify the reasons for the action so  
61 taken. Any appeal by the health care provider shall be  
62 brought in the circuit court of Kanawha county or in the  
63 county in which the provider's principal place of  
64 business is located. The scope of the court's review of  
65 such an appeal shall be as provided in section four of  
66 said article. The provider may be suspended or termi-  
67 nated, based upon the final order of the commissioner,  
68 pending final disposition of any appeal. Such final order  
69 may be stayed by the circuit court after hearing, but  
70 shall not be stayed in or as a result of any ex parte  
71 proceeding. If the health care provider does not appeal  
72 the final order of the commissioner within thirty days,  
73 it shall be final.

74 (c) No payment shall be made to a health care  
75 provider or to an injured employee for services provided  
76 by a health care provider after the effective date of a  
77 commissioner's final order terminating or suspending  
78 the health care provider: *Provided*, That nothing herein  
79 shall prohibit payment by the commissioner or self-  
80 insured employer to a suspended or terminated health  
81 care provider for medical services rendered where the  
82 medical services were rendered to an injured employee  
83 in an emergency situation. The suspended or terminated  
84 provider is prohibited from making any charge or  
85 charges for any services so provided against the injured  
86 employee unless the injured employee, before any  
87 services are rendered, is given notice by the provider in  
88 writing that the provider does not participate in the  
89 workers' compensation program and that the injured  
90 employee will be solely responsible for all payments to

91 the provider, and unless the injured employee also signs  
92 a written consent, before any services are rendered, to  
93 make payment directly and to waive any right to  
94 reimbursement from the commissioner or the self-  
95 insured employer. The written consent and waiver  
96 signed by the injured employee shall be filed by the  
97 provider with the commissioner and shall be made a  
98 part of the claim file.

99 (d) The commissioner shall notify each claimant,  
100 whose duly authorized treating physician or other health  
101 care provider has been suspended or terminated  
102 pursuant to this section, of the suspension or termination  
103 of the provider's rights to obtain payment under this  
104 chapter and shall assist the claimant in arranging for  
105 transfer of his or her care to another physician or  
106 provider.

107 (e) Each suspended or terminated provider shall post  
108 in the provider's public waiting area or areas a written  
109 notice, in the form required by the commissioner, of the  
110 suspension or termination of the provider's rights to  
111 obtain payment under this chapter.

112 (f) A suspended or terminated provider may apply for  
113 reinstatement at the end of the term of suspension or,  
114 if terminated, after one year from the effective date of  
115 termination.

116 (g) The commissioner shall promulgate rules for the  
117 purpose of implementing this section.

**§23-4-6. Classification of and criteria for disability  
benefits.**

1 Where compensation is due an employee under the  
2 provisions of this chapter for personal injury, the  
3 compensation shall be as provided in the following  
4 schedule:

5 (a) The expressions "average weekly wage earnings,  
6 wherever earned, of the injured employee, at the date  
7 of injury" and "average weekly wage in West Virginia",  
8 as used in this chapter, shall have the meaning and shall  
9 be computed as set forth in section fourteen of this  
10 article except for the purpose of computing temporary



11 total disability benefits for part-time employees pursu-  
12 ant to the provisions of section six-d of this article.

13 (b) If the injury causes temporary total disability, the  
14 employee shall receive during the continuance thereof  
15 weekly benefits as follows: A maximum weekly benefit  
16 to be computed on the basis of seventy percent of the  
17 average weekly wage earnings, wherever earned, of the  
18 injured employee, at the date of injury, not to exceed the  
19 percentage of the average weekly wage in West Virgi-  
20 nia, as follows: On or after the first day of July, one  
21 thousand nine hundred sixty-nine, forty-five percent; on  
22 or after the first day of July, one thousand nine hundred  
23 seventy, fifty percent; on or after the first day of July,  
24 one thousand nine hundred seventy-one, fifty-five  
25 percent; on or after the first day of July, one thousand  
26 nine hundred seventy-three, sixty percent; on or after  
27 the first day of July, one thousand nine hundred seventy-  
28 four, eighty percent; on or after the first day of July,  
29 one thousand nine hundred seventy-five, one hundred  
30 percent.

31 The minimum weekly benefits paid hereunder shall  
32 not be less than twenty-six dollars per week for injuries  
33 occurring on or after the first day of July, one thousand  
34 nine hundred sixty-nine; not less than thirty-five dollars  
35 per week for injuries occurring on or after the first day  
36 of July, one thousand nine hundred seventy-one; not less  
37 than forty dollars per week for injuries occurring on or  
38 after the first day of July, one thousand nine hundred  
39 seventy-three; not less than forty-five dollars per week  
40 for injuries occurring on or after the first day of July,  
41 one thousand nine hundred seventy-four; and for injuries  
42 occurring on or after the first day of July, one thousand  
43 nine hundred seventy-six, thirty-three and one-third  
44 percent of the average weekly wage in West Virginia,  
45 except as provided in section six-d of this article.

46 (c) Subdivision (b) of this section shall be limited as  
47 follows: Aggregate award for a single injury causing  
48 temporary disability shall be for a period not exceeding  
49 two hundred eight weeks.

50 (d) If the injury causes permanent total disability,

51 benefits shall be payable during the remainder of life  
52 at the maximum or minimum weekly benefits as  
53 provided in subdivision (b) of this section for temporary  
54 total disability. A permanent disability of eighty-five  
55 percent or more shall entitle the employee to a rebut-  
56 table presumption of a permanent total disability for the  
57 purpose of this section. Under no circumstances shall  
58 the commissioner grant an additional permanent  
59 disability award to a claimant receiving a permanent  
60 total disability award, or to a claimant who has  
61 previously been granted permanent disability awards  
62 totaling eighty-five percent or more and has been  
63 granted a permanent total disability award: *Provided,*  
64 That if any claimant thereafter sustains another  
65 compensable injury and has permanent partial disabili-  
66 ty resulting therefrom, the total permanent disability  
67 award benefit rate shall be computed at the highest  
68 benefit rate justified by any of the compensable injuries,  
69 and the cost of any increase in the permanent total  
70 disability benefit rate shall be paid from the second  
71 injury reserve created by section one, article three of  
72 this chapter. In any claim in which a claimant aggre-  
73 gates permanent partial disability awards in the amount  
74 of eighty-five percent or more after the effective date of  
75 this subsection, the claimant shall be entitled to a  
76 permanent total disability award unless the evidence  
77 establishes that the claimant is not permanently and  
78 totally disabled pursuant to subdivision (n) of this  
79 section.

80 (e) If the injury causes permanent disability less than  
81 permanent total disability, the percentage of disability  
82 to total disability shall be determined and the award  
83 computed on the basis of four weeks' compensation for  
84 each percent of disability determined, at the following  
85 maximum or minimum benefit rates: Seventy percent  
86 of the average weekly wage earnings, wherever earned,  
87 of the injured employee, at the date of injury, not to  
88 exceed the percentage of the average weekly wage in  
89 West Virginia, as follows: On or after the first day of  
90 July, one thousand nine hundred sixty-nine, forty-five  
91 percent; on or after the first day of July, one thousand  
92 nine hundred seventy, fifty percent; on or after the first

93 day of July, one thousand nine hundred seventy-one,  
94 fifty-five percent; on or after the first day of July, one  
95 thousand nine hundred seventy-three, sixty percent; on  
96 or after the first day of July, one thousand nine hundred  
97 seventy-five, sixty-six and two-thirds percent.

98 The minimum weekly benefit under this subdivision  
99 shall be as provided in subdivision (b) of this section for  
100 temporary total disability.

101 (f) If the injury results in the total loss by severance  
102 of any of the members named in this subdivision, the  
103 percentage of disability shall be determined by the  
104 commissioner, with the following table establishing the  
105 minimum percentage of disability. In determining the  
106 percentage of disability, the commissioner may be  
107 guided by, but shall not be limited to, the disabilities  
108 enumerated in the following table, and in no event shall  
109 the disability be less than that specified in the following  
110 table:

111 The loss of a great toe shall be considered a ten  
112 percent disability.

113 The loss of a great toe (one phalanx) shall be consi-  
114 dered a five percent disability.

115 The loss of other toes shall be considered a four  
116 percent disability.

117 The loss of other toes (one phalanx) shall be considered  
118 a two percent disability.

119 The loss of all toes shall be considered a twenty-five  
120 percent disability.

121 The loss of forepart of foot shall be considered a thirty  
122 percent disability.

123 The loss of a foot shall be considered a thirty-five  
124 percent disability.

125 The loss of a leg shall be considered a forty-five  
126 percent disability.

127 The loss of thigh shall be considered a fifty percent  
128 disability.

- 129     The loss of thigh at hip joint shall be considered a  
130     sixty percent disability.
- 131     The loss of a little or fourth finger (one phalanx) shall  
132     be considered a three percent disability.
- 133     The loss of a little or fourth finger shall be considered  
134     a five percent disability.
- 135     The loss of ring or third finger (one phalanx) shall be  
136     considered a three percent disability.
- 137     The loss of ring or third finger shall be considered a  
138     five percent disability.
- 139     The loss of middle or second finger (one phalanx) shall  
140     be considered a three percent disability.
- 141     The loss of middle or second finger shall be considered  
142     a seven percent disability.
- 143     The loss of index or first finger (one phalanx) shall  
144     be considered a six percent disability.
- 145     The loss of index or first finger shall be considered  
146     a ten percent disability.
- 147     The loss of thumb (one phalanx) shall be considered  
148     a twelve percent disability.
- 149     The loss of thumb shall be considered a twenty  
150     percent disability.
- 151     The loss of thumb and index finger shall be considered  
152     a thirty-two percent disability.
- 153     The loss of index and middle finger shall be consi-  
154     dered a twenty percent disability.
- 155     The loss of middle and ring finger shall be considered  
156     a fifteen percent disability.
- 157     The loss of ring and little finger shall be considered  
158     a ten percent disability.
- 159     The loss of thumb, index and middle finger shall be  
160     considered a forty percent disability.
- 161     The loss of index, middle and ring finger shall be  
162     considered a thirty percent disability.
- 163     The loss of middle, ring and little finger shall be  
164     considered a twenty percent disability.

163 The loss of four fingers shall be considered a thirty-  
164 two percent disability.

165 The loss of hand shall be considered a fifty percent  
166 disability.

167 The loss of forearm shall be considered a fifty-five  
168 percent disability.

169 The loss of arm shall be considered a sixty percent  
170 disability.

171 The total and irrecoverable loss of the sight of one eye  
172 shall be considered a thirty-three percent disability. For  
173 the partial loss of vision in one, or both eyes, the  
174 percentages of disability shall be determined by the  
175 commissioner, using as a basis the total loss of one eye.

176 The total and irrecoverable loss of the hearing of one  
177 ear shall be considered a twenty-two and one-half  
178 percent disability. The total and irrecoverable loss of  
179 hearing of both ears shall be considered a fifty-five  
180 percent disability.

181 For the partial loss of hearing in one, or both ears,  
182 the percentage of disability shall be determined by the  
183 commissioner, using as a basis the total loss of hearing  
184 in both ears.

185 Should a claimant sustain a compensable injury which  
186 results in the total loss by severance of any of the bodily  
187 members named in this subdivision, die from sickness  
188 or noncompensable injury before the commissioner  
189 makes the proper award for such injury, the commis-  
190 sioner shall make such award to claimant's dependents  
191 as defined in this chapter, if any; such payment to be  
192 made in the same installments that would have been  
193 paid to claimant if living: *Provided*, That no payment  
194 shall be made to any surviving spouse of such claimant  
195 after his or her remarriage, and that this liability shall  
196 not accrue to the estate of such claimant and shall not  
197 be subject to any debts of, or charges against, such  
198 estate.

199 (g) Should a claimant to whom has been made a  
200 permanent partial award of from one percent to eighty-

201 four percent, both inclusive, die from sickness or  
202 noncompensable injury, the unpaid balance of such  
203 award shall be paid to claimant's dependents as defined  
204 in this chapter, if any; such payment to be made in the  
205 same installments that would have been paid to claimant  
206 if living: *Provided*, That no payment shall be made  
207 to any surviving spouse of such claimant after his or her  
208 remarriage, and that this liability shall not accrue to the  
209 estate of such claimant and shall not be subject to any  
210 debts of, or charges against, such estate.

211 (h) For the purposes of this chapter, a finding of the  
212 occupational pneumoconiosis board shall have the force  
213 and effect of an award.

214 (i) The award for permanent disabilities intermediate  
215 to those fixed by the foregoing schedule and permanent  
216 disability of from one percent to eighty-four percent  
217 shall be the same proportion and shall be computed and  
218 allowed by the commissioner.

219 (j) The percentage of all permanent disabilities other  
220 than those enumerated in subdivision (f) of this section  
221 shall be determined by the commissioner, and awards  
222 made in accordance with the provisions of subdivision  
223 (d) or (e) of this section. Where there has been an injury  
224 to a member as distinguished from total loss by  
225 severance of that member, the commissioner in determining  
226 the percentage of disability may be guided by,  
227 but shall not be limited to, the disabilities enumerated  
228 in subdivision (f) of this section.

229 (k) Compensation payable under any subdivision of  
230 this section shall not exceed the maximum nor be less  
231 than the weekly benefits specified in subdivision (b) of  
232 this section.

233 (l) Except as otherwise specifically provided in this  
234 chapter, temporary total disability benefits payable  
235 under subdivision (b) of this section shall not be  
236 deductible from permanent partial disability awards  
237 payable under subdivision (e) or (f) of this section.  
238 Compensation, either temporary total or permanent  
239 partial, under this section shall be payable only to the  
240 injured employee and the right thereto shall not vest in

241 his or her estate, except that any unpaid compensation  
242 which would have been paid or payable to the employee  
243 up to the time of his or her death, if he or she had lived,  
244 shall be paid to the dependents of such injured employee  
245 if there be such dependents at the time of death.

246 (m) The following permanent disabilities shall be  
247 conclusively presumed to be total in character:

248 Loss of both eyes or the sight thereof.

249 Loss of both hands or the use thereof.

250 Loss of both feet or the use thereof.

251 Loss of one hand and one foot or the use thereof.

252 In all other cases permanent disability shall be  
253 determined by the commissioner in accordance with the  
254 facts in the case and award made in accordance with  
255 the provisions of subdivision (d) or (e).

256 (n) A disability which renders the injured employee  
257 unable to engage in substantial gainful activity requir-  
258 ing skills or abilities comparable to those of any gainful  
259 activity in which he or she has previously engaged with  
260 some regularity and over a substantial period of time  
261 shall be considered in determining the issue of total  
262 disability. In addition, the vocational standards adopted  
263 pursuant to subsection (m) of section seven, article three,  
264 chapter twenty-one-a of this code shall be considered  
265 once they are effective.

**§23-4-8c. Occupational pneumoconiosis board—Reports  
and distribution thereof; presumption; find-  
ings required of board; objection to findings;  
procedure thereon; limitations on refilings;  
consolidation of claims.**

1 (a) The occupational pneumoconiosis board, as soon as  
2 practicable, after it has completed its investigation,  
3 shall make its written report, to the commissioner, of its  
4 findings and conclusions on every medical question in  
5 controversy and the commissioner shall send one copy  
6 thereof to the employee or claimant and one copy to the  
7 employer, and the board shall also return to and file  
8 with the commissioner all the evidence as well as all

9 statements under oath, if any, of the persons who appear  
10 before it on behalf of the employee or claimant, or  
11 employer and also all medical reports and X-ray  
12 examinations produced by or on behalf of the employee  
13 or claimant, or employer.

14 (b) If it can be shown that the claimant or deceased  
15 employee has been exposed to the hazard of inhaling  
16 minute particles of dust in the course of and resulting  
17 from his or her employment for a period of ten years  
18 during the fifteen years immediately preceding the date  
19 of his or her last exposure to such hazard and that such  
20 claimant or deceased employee has sustained a chronic  
21 respiratory disability, then it shall be presumed that  
22 such claimant is suffering or such deceased employee  
23 was suffering at the time of his or her death from  
24 occupational pneumoconiosis which arose out of and in  
25 the course of his or her employment. This presumption  
26 shall not be conclusive.

27 (c) The findings and conclusions of the board shall set  
28 forth, among other things, the following:

29 (1) Whether or not the claimant or the deceased  
30 employee has contracted occupational pneumoconiosis  
31 and, if so, the percentage of permanent disability  
32 resulting therefrom.

33 (2) Whether or not the exposure in the employment  
34 was sufficient to have caused the claimant's or deceased  
35 employee's occupational pneumoconiosis or to have  
36 perceptibly aggravated an existing occupational pneu-  
37 moconiosis, or other occupational disease.

38 (3) What, if any, physician appeared before the board  
39 on behalf of the claimant or employer, and what, if any,  
40 medical evidence was produced by or on behalf of the  
41 claimant or employer.

42 (d) If either party objects to the whole or any part of  
43 such findings and conclusions of the board, such party  
44 shall file with the commissioner or, on or after the first  
45 day of July, one thousand nine hundred ninety-one, with  
46 the office of judges, within thirty days from receipt of  
47 such copy to such party, unless for good cause shown,



48 the commissioner or chief administrative law judge  
49 extends such time, such party's objections thereto in  
50 writing, specifying the particular statements of the  
51 board's findings and conclusions to which such party  
52 objects. The filing of an objection within the time  
53 specified is hereby declared to be a condition of the right  
54 to litigate such findings and hence jurisdictional. After  
55 the time has expired for the filing of objections to the  
56 findings and conclusions of the board, the commissioner  
57 or administrative law judge shall proceed to act as  
58 provided in this chapter. If after the time has expired  
59 for the filing of objections to the findings and conclu-  
60 sions of the board no objections have been filed, the  
61 report of a majority of the board of its findings and  
62 conclusions on any medical question shall be taken to be  
63 plenary and conclusive evidence of the findings and  
64 conclusions therein stated. If objection has been filed to  
65 the findings and conclusions of the board, notice thereof  
66 shall be given to the board, and the members thereof  
67 joining in such findings and conclusions shall appear at  
68 the time fixed by the commissioner or office of judges  
69 for the hearing to submit to examination and cross-  
70 examination in respect to such findings and conclusions.  
71 At such hearing, evidence to support or controvert the  
72 findings and conclusions of the board shall be limited  
73 to examination and cross-examination of the members  
74 of the board, and to the taking of testimony of other  
75 qualified physicians and roentgenologists.

76 (e) In the event that a claimant receives a final  
77 decision that he or she has no evidence of occupational  
78 pneumoconiosis, then such claimant is barred for a  
79 period of three years from the date of the occupational  
80 pneumoconiosis board's decision or until his or her  
81 employment with the employer who employed the  
82 claimant at the time designated as the claimant's last  
83 date of exposure in the denied claim has terminated,  
84 whichever is sooner, from filing a new claim or pursuing  
85 a previously filed, but unrulled upon, claim for occupa-  
86 tional pneumoconiosis or requesting a modification of  
87 any prior ruling finding him or her not to be suffering  
88 from occupational pneumoconiosis. For the purposes of  
89 this subsection, a claimant's employment shall be

90 deemed to be terminated if, for any reason, he or she  
91 has not worked for that employer for a period in excess  
92 of ninety days. Any previously filed, but unrulued upon,  
93 claim shall be consolidated with the claim in which the  
94 board's decision is made and shall be denied together  
95 with the decided claim. The provisions of this subsection  
96 shall not be applied in any claim where doing so would,  
97 in and of itself, later cause a claimant's claim to be  
98 forever barred by the provisions of section fifteen of this  
99 article.

**§23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.**

1 (a) The power and jurisdiction of the commissioner  
2 over each case shall be continuing and he may from time  
3 to time, after due notice to the employer, make such  
4 modifications or changes with respect to former findings  
5 or orders as may be justified: *Provided*, That no further  
6 award may be made in fatal cases arising after the  
7 seventh day of March, one thousand nine hundred  
8 twenty-nine, except within two years after the death of  
9 the employee, or in case of nonfatal injuries, on and after  
10 the seventh day of March, one thousand nine hundred  
11 twenty-nine, except within five years after payments for  
12 temporary disability shall have ceased or not more than  
13 two times within five years after the commissioner shall  
14 have made the last payment in the original award or any  
15 subsequent increase thereto in any permanent disability  
16 case: *Provided, however*, That no such modification or  
17 change may be made in any case in which no award has  
18 been made, except within five years after the date of  
19 injury: *Provided further*, That a further award may be  
20 made for medical benefits only at any time. In any case  
21 in which an injured employee shall make application for  
22 a further adjustment of his claim, if such application be  
23 in writing and filed within the applicable time limit as  
24 prescribed herein, the commissioner shall pass upon and  
25 determine the merits of such application within thirty

26 days after the filing thereof.

27 (b) If such application is based on a report of any  
28 medical examination made of the claimant and submit-  
29 ted by the claimant to the commissioner in support of  
30 his application, and the claim is opened for further  
31 consideration and additional award is later made, the  
32 claimant shall be reimbursed for the expenses of such  
33 examination. Such reimbursement shall be made by the  
34 commissioner to the claimant, in addition to all other  
35 benefits awarded, upon due proof of the amount thereof  
36 being furnished the commissioner by the claimant, but  
37 shall in no case exceed the sum fixed pursuant to the  
38 commissioner's schedule of maximum reasonable fees  
39 established under the provisions of section three of this  
40 article.

41 (c) The commissioner shall have continuing power and  
42 jurisdiction over claims in which permanent total  
43 disability awards have been made after the effective  
44 date of this section.

45 (1) The commissioner shall continuously monitor  
46 permanent total disability awards and may from time  
47 to time, after due notice to the claimant, reopen a claim  
48 for reevaluation of the continuing nature of the disabili-  
49 ty and possible modification of the award: *Provided*,  
50 That such reopenings shall not be done sooner than  
51 every two years: *Provided, however*, That any individual  
52 claimant shall only be reevaluated a total of two times  
53 after which he or she may not be again reevaluated  
54 under the provisions of this subsection. The commis-  
55 sioner may reopen a claim for reevaluation when, in the  
56 commissioner's sole discretion, he or she concludes that  
57 there exists good cause to believe that the claimant no  
58 longer meets the eligibility requirements under subdivi-  
59 sion (n), section six of this article. The eligibility  
60 requirements, including any vocational standards, shall  
61 be applied as those requirements are stated at the time  
62 of a claim's reopening. This section shall not be  
63 applicable to any claim in which the final decision on  
64 the eligibility of the claimant to a permanent total  
65 disability award was made more than ten years prior  
66 to the date of proposed reevaluation.

67 (2) Upon reopening a claim under this subsection, the  
68 commissioner may take evidence, have the claimant  
69 evaluated, make findings of fact and conclusions of law  
70 and shall vacate, modify or affirm the original perman-  
71 ent total disability award as the record requires. The  
72 claimant's former employer shall not be a party to the  
73 reevaluation, but shall be notified of the reevaluation  
74 and may submit such information to the commissioner  
75 as the employer may elect. In the event the claimant  
76 retains his or her award following the reevaluation, then  
77 the claimant's reasonable attorneys' fees incurred in  
78 defending the award shall be paid by the workers'  
79 compensation division from the supercedeas reserve of  
80 the surplus fund. In addition, the workers' compensation  
81 division shall reimburse a prevailing claimant for his or  
82 her costs in obtaining one evaluation on each issue  
83 during the course of the reevaluation with such reim-  
84 bursement being made from the supercedeas reserve of  
85 the surplus fund. The compensation programs perfor-  
86 mance council shall adopt criteria for the determination  
87 of reasonable attorneys' fees.

88 (3) This subsection shall not be applied to awards  
89 made under the provisions of subdivision (m) of section  
90 six of this article. The claimant may seek review of the  
91 commissioner's final order as otherwise provided for in  
92 article five of this chapter for review of orders granting  
93 or denying permanent disability awards.

**§23-4-19. Wrongfully seeking compensation; criminal penalties; restitution; termination of compensation.**

1 Any person who shall knowingly and with fraudulent  
2 intent secure or attempt to secure larger compensation,  
3 or compensation for a longer term than he or she is  
4 entitled to, from the workers' compensation fund or  
5 from a self-insured employer, or knowingly and with  
6 like intent secure or attempt to secure compensation  
7 from such fund or self-insured employer when he or she  
8 is not entitled thereto, or shall knowingly and with like  
9 intent aid and abet anyone in the commission of the  
10 offenses herein set forth, shall be guilty of a felony, and,  
11 upon conviction thereof, shall be fined not exceeding five

12 thousand dollars, or imprisoned not exceeding two  
13 years, or both, and in addition to any other penalty  
14 imposed, the court shall order any person convicted  
15 under this section to make full restitution of all moneys  
16 paid by the commissioner or self-insured employer as  
17 the result of the violation of this section. If the person  
18 so convicted is receiving compensation from such fund  
19 or self-insured employer, he or she shall, from and after  
20 such conviction, cease to receive such compensation as  
21 a result of that alleged injury or disease.

**§23-4-22. Permanent disability evaluations; limitations;  
notice.**

1 Notwithstanding any provision in this chapter to the  
2 contrary, any claim which was closed for the receipt of  
3 temporary total disability benefits or which was closed  
4 on a no lost time basis and which closure was more than  
5 five years prior to the effective date of this section shall  
6 not be considered to still be open or the subject for an  
7 evaluation of the claimant for permanent disability  
8 merely because such evaluation has not heretofore been  
9 conducted and a decision on permanent disability has  
10 not been made: *Provided*, That if a request for an  
11 evaluation was made in such a claim prior to the twenty-  
12 ninth day of March, one thousand nine hundred ninety-  
13 three, the commissioner shall have such evaluation  
14 performed. In every such instance, such a claim shall  
15 be a case in which no award has been made for the  
16 purposes of section sixteen of this article. In every claim  
17 closed after the effective date of this section, the  
18 commissioner shall give notice to the parties of the  
19 claimant's right to a permanent disability evaluation.

**§23-4-23. Permanent total disability benefits; reduction of  
disability benefits; social security benefits;  
applications; release of information; credit or  
reduction of benefits; application of section;  
severability.**

1 (a) This section is applicable whenever benefits are  
2 being paid for permanent total disability benefits  
3 arising under subdivision (d), (m) or (n), section six of  
4 this article or under section eight-c of this article. This

5 section is not applicable to the receipt of temporary total  
6 disability benefits, the receipt of permanent partial  
7 disability benefits, the receipt of benefits by partially or  
8 wholly dependent persons or to the receipt of benefits  
9 pursuant to the provisions of subsection (e), section ten  
10 of this article. This section is not applicable to the  
11 receipt of medical benefits or the payment therefor.

12 (b) Whenever applicable benefits are paid to a  
13 beneficiary with respect to the same time period for  
14 which old-age insurance benefit payments under the  
15 Social Security Act, 42 U.S.C. 401 and 402, or payments  
16 under a self-insurance plan, a wage continuation plan  
17 or a disability insurance policy provided by an em-  
18 ployer, are also received or being received by the  
19 beneficiary, then such applicable benefits shall be  
20 reduced by these amounts:

21 (1) Fifty percent of the amount of full old-age  
22 insurance benefits received or being received under the  
23 Social Security Act: *Provided*, That if the claimant is  
24 receiving reduced old-age retirement benefits, then ten  
25 percent of the amount of old-age social security insu-  
26 rance benefits, had such benefits not been reduced, shall  
27 be deducted from the applicable benefits: *Provided*,  
28 *however*, That social security disability benefits shall not  
29 be deducted from the applicable benefits when such  
30 disability benefits are later changed to old-age insu-  
31 rance benefits upon the claimant's attaining the age  
32 specified for such conversion by the social security  
33 administration;

34 (2) The after-tax amount of the payments received or  
35 being received under a self-insurance plan, a wage  
36 continuation plan, or under a disability insurance policy  
37 provided by an employer if the employee did not  
38 contribute directly to the plan or to the payment of  
39 premiums regarding the disability insurance policy; or

40 (3) The proportional amount, based on the ratio of the  
41 employer's contributions to the total insurance premi-  
42 ums for the policy period involved, of the after-tax  
43 amount of the payments received or being received by  
44 the employee pursuant to a disability insurance policy

45 provided by an employer if the employee did contribute  
46 directly to the payment of premiums regarding the  
47 disability insurance policy: *Provided*, That in no event  
48 shall applicable benefits be reduced below the minimum  
49 weekly benefits as provided for in subdivisions (b) and  
50 (d), section six of this article.

51 (c) The commissioner shall notify a claimant or self-  
52 insured employer of possible eligibility for social  
53 security benefits and the requirements for establishing  
54 proof of application for those benefits. Notification shall  
55 be promptly mailed by the commissioner or self-insured  
56 employer to the claimant after the date on which by  
57 reason of age the claimant may be entitled to social  
58 security benefits. A self-insured employer shall file a  
59 copy of any such notice of possible eligibility with the  
60 commissioner within ten days of its mailing to the  
61 claimant.

62 (1) Within thirty days after the receipt of the  
63 notification of possible eligibility, the claimant shall:

64 (A) Make application for social security benefits;

65 (B) Provide the commissioner or a self-insured  
66 employer with proof of that application; and

67 (C) Provide the commissioner or self-insured employer  
68 with an authorization for release of information which  
69 shall be utilized by the commissioner or self-insured  
70 employer to obtain necessary benefit entitlement and  
71 amount information from the social security administra-  
72 tion. The authorization for release of information shall  
73 be effective for one year.

74 (2) Failure of the claimant to provide the proof of  
75 application or authorization for release of information  
76 shall allow the commissioner or self-insured employer  
77 with the approval of the commissioner to discontinue the  
78 payment of applicable benefits until the proof of  
79 application and the authorization for release of informa-  
80 tion is provided. Compensation benefits withheld shall  
81 be reimbursed to the claimant upon the providing of the  
82 required proof of application or the authorization for  
83 release of information, or both.

84 (d) If the commissioner or the self-insured employer  
85 is required to submit a new authorization for release of  
86 information to the social security administration in  
87 order to receive information necessary to comply with  
88 this section, the claimant shall provide the new author-  
89 ization for release of information within thirty days of  
90 a request by the commissioner or self-insured employer.  
91 Failure of the claimant to provide the new authorization  
92 for release of information shall allow the commissioner  
93 or self-insured employer with the approval of the  
94 commissioner to discontinue the payment of applicable  
95 benefits until the authorization for release of informa-  
96 tion is provided. Compensation benefits withheld shall  
97 be reimbursed to the claimant upon the providing of the  
98 authorization for release of information.

99 (e) Within thirty days after either the date of first  
100 payment of benefits or after the date of application for  
101 any benefit under subsection (b) of this section, which-  
102 ever is later, the claimant shall provide the commis-  
103 sioner or self-insured employer with a properly executed  
104 authorization for release of information which shall be  
105 utilized by the commissioner or self-insured employer to  
106 obtain necessary benefit entitlement and amount  
107 information from the appropriate source. The authori-  
108 zation for release of information shall be effective for  
109 one year. Failure of the claimant to provide a properly  
110 executed authorization for release of information shall  
111 allow the commissioner or self-insured employer with  
112 the approval of the commissioner to discontinue the  
113 payment of applicable benefits until the authorization  
114 for release of information is provided. Compensation  
115 benefits withheld shall be reimbursed to the claimant  
116 upon the providing of the authorization for release of  
117 information. If the commissioner or the self-insured  
118 employer is required to submit a new authorization for  
119 release of information to the appropriate source in order  
120 to receive information necessary to comply with this  
121 section, the claimant shall provide the new authorization  
122 for release of information within thirty days of a request  
123 by the commissioner or self-insured employer. Failure  
124 of the claimant to provide the new authorization for  
125 release of information shall allow the commissioner or



126 self-insured employer with the approval of the commis-  
127 sioner to discontinue the payment of applicable benefits  
128 until the authorization for release of information is  
129 provided. Compensation benefits withheld shall be  
130 reimbursed to the claimant upon the providing of the  
131 authorization for release of information.

132 (f) Any benefit payments under the Social Security  
133 Act, or any fund, policy or program as specified under  
134 subsection (b) of this section which the claimant receives  
135 after the effective date of this section and during a  
136 period in which the claimant also receives unreduced  
137 workers' compensation benefits shall be considered to  
138 create an overpayment of benefits for that period. The  
139 commissioner or self-insured employer shall calculate  
140 the amount of the overpayment and send a notice of  
141 overpayment and a request for reimbursement to the  
142 claimant. Failure by the claimant to reimburse the  
143 commissioner or self-insured employer within thirty  
144 days after the mailing date of the notice of request for  
145 reimbursement shall allow the commissioner or the self-  
146 insured employer, with the approval of the commis-  
147 sioner, to discontinue fifty percent of future benefits  
148 payments. The benefit payments withheld shall be  
149 credited against the amount of the overpayment.  
150 Payment of the appropriate benefit shall resume when  
151 the total amount of the overpayment has been withheld.  
152 Any self-insured employer taking a credit or making a  
153 reduction as provided for in this subsection shall  
154 immediately report to the commissioner the amount of  
155 the credit or reduction and, as requested by the  
156 commissioner, furnish to the commissioner satisfactory  
157 proof of the basis for a credit or reduction.

158 (g) Nothing in this section shall be considered to  
159 compel a claimant to apply for early federal social  
160 security old-age benefits or to apply for other early or  
161 reduced benefits.

162 (h) This section applies to awards of permanent total  
163 disability made after the effective date of this section.

164 (i) The commissioner and the compensation programs  
165 performance council shall promulgate the appropriate

166 rules for the interpretation, processing and enforcement  
167 of this section.

168 (j) If any portion of this section or any application of  
169 this section is subsequently found to be unconstitutional  
170 or in violation of applicable law, it shall not affect the  
171 validity of the remainder of this section or such  
172 applications of the section as are not unconstitutional or  
173 in such violation.

**§23-4-24. Permanent total disability awards; retirement  
age; limitations on eligibility and the intro-  
duction of evidence; effects of other types of  
awards; procedures; requests for awards;  
jurisdiction.**

1 Notwithstanding any provision of this chapter to the  
2 contrary, from and after the effective date of this section  
3 the following provisions shall be in effect.

4 (a) Except as stated below, no claimant shall be  
5 awarded permanent total disability benefits arising  
6 under subdivision (d) or (n), section six or of section  
7 eight-c of this article who terminates active employment  
8 and is receiving full old-age retirement benefits under  
9 the Social Security Act, 42 U.S.C. 401 and 402. Any such  
10 claimant shall be evaluated only for the purposes of  
11 receiving a permanent partial disability award pre-  
12 mised solely upon the claimant's impairments. This  
13 subsection shall not be applicable in any claim in which  
14 the claimant has completed the submission of his or her  
15 evidence on the issue of permanent total disability prior  
16 to the later of the following: Termination of active  
17 employment or the initial receipt of full old-age  
18 retirement benefits under the Social Security Act. Once  
19 the claimant has terminated active employment and has  
20 begun to receive full old-age social security retirement  
21 benefits, the claimant shall not be permitted to produce  
22 additional evidence of permanent total disability before  
23 the commissioner, the office of judges, the appeal board  
24 or the supreme court of appeals nor shall such a claim  
25 be remanded for the production of such evidence.

26 (b) For the purposes of subdivision (d), section six of  
27 this article, the award of permanent partial disability

28 benefits under the provisions of section six-b of this  
29 article or under that portion of section six-a of this  
30 article which awards twenty weeks of benefits to a  
31 claimant who has occupational pneumoconiosis but  
32 without measurable pulmonary impairment therefrom  
33 shall not be counted towards the eighty-five percent  
34 needed to gain the rebuttable presumption of permanent  
35 total disability when such claimant has terminated  
36 active employment and is receiving federal nondisability  
37 pension or retirement benefits, including old-age  
38 benefits under the Social Security Act. This subsection  
39 shall not affect any other awards of permanent partial  
40 disability benefits and their use in achieving the  
41 rebuttable eighty-five percent presumption.

42 (c) The office of judges shall not have jurisdiction to  
43 initially hear and decide any claim pertaining in whole  
44 or in part to subdivision (d) or (n), section six of this  
45 article. Any claim for permanent total disability  
46 benefits arising under said subdivisions shall first be  
47 presented to the commissioner as part of the initial  
48 claim filing or by way of an application for modification  
49 or adjustment pursuant to section sixteen of this article  
50 and section one-a, article five of this chapter. The office  
51 of judges may consider such a claim only after the  
52 commissioner has entered an appropriate order.

**§23-4-25. Permanent total disability benefits; reduction of  
disability benefits for wages earned by  
claimant.**

1 (a) After the effective date of this section, a reduction  
2 in the amount of benefits as specified in subsection (b)  
3 of this section shall be made whenever benefits are  
4 being paid for a permanent total disability award  
5 regardless of when such benefits were awarded. This  
6 section is not applicable to the receipt of medical  
7 benefits or the payment therefor, the receipt of perman-  
8 ent partial disability benefits, the receipt of benefits by  
9 partially or wholly dependant persons, or to the receipt  
10 of benefits pursuant to the provisions of subsection (e),  
11 section ten of this article. Prior to the application of this  
12 section to any claimant, the commissioner shall give the  
13 claimant notice of the effect of this section upon a  
14 claimant's award if and when such claimant later earns

15 wages.

16 (b) Whenever applicable benefits are paid to a  
17 claimant with respect to the same time period in which  
18 the claimant has earned wages as a result of his or her  
19 employment, the following reduction in applicable  
20 benefits shall be made. The claimant's applicable  
21 monthly benefits and monthly net wages received from  
22 the current employment shall be added together. If such  
23 total exceeds by more than one hundred and twenty  
24 percent of the amount of the claimant's monthly net  
25 wages earned during his or her last employment prior  
26 to the award of permanent total disability benefits, then  
27 such excess shall be reduced by one dollar for each two  
28 dollars that the claimant's monthly net wages exceed the  
29 one hundred and twenty percent level: *Provided*, That  
30 in no event shall applicable benefits be reduced below  
31 the minimum weekly benefits as provided for in  
32 subdivisions (b) and (d), section six of this article.

#### ARTICLE 5. REVIEW.

##### §23-5-1. Notice by commissioner of decision; procedures on claims; objections and hearing; mediation.

1 (a) The commissioner shall have full power and  
2 authority to hear and determine all questions within his  
3 or her jurisdiction. In matters arising under articles  
4 three and four of this chapter, the commissioner or a  
5 designated deputy shall promptly review and investi-  
6 gate all claims. The parties to a claim shall file such  
7 information in support of their respective positions as  
8 they deem proper. In addition, the commissioner or a  
9 designated deputy is authorized to develop such addi-  
10 tional information as he or she deems to be necessary  
11 in the interests of fairness to the parties and in keeping  
12 with the commissioner's fiduciary obligations to the  
13 fund. With regard to any issue which is ready for a  
14 decision, the commissioner or designated deputy shall  
15 explain the basis of his or her decisions.

16 (b) Except with regard to interlocutory matters, upon  
17 making any decision, upon the making or refusing to  
18 make any award, or upon the making of any modifica-  
19 tion or change with respect to former findings or orders,  
20 as provided by section sixteen, article four of this  
21 chapter, the commissioner shall give notice, in writing,

22 to the employer, employee, claimant, as the case may be,  
23 of his or her action, which notice shall state the time  
24 allowed for filing an objection to such finding, and such  
25 action of the commissioner shall be final unless the  
26 employer, employee, claimant or dependant shall, within  
27 thirty days after the receipt of such notice, object in  
28 writing, to such finding, and unless an objection is filed  
29 within such thirty-day period, such finding or action  
30 shall be forever final, such time limitation being hereby  
31 declared to be a condition of the right to litigate such  
32 finding or action and hence jurisdictional. Any such  
33 objection shall be filed with the office of judges with a  
34 copy served upon the commissioner and other parties in  
35 accordance with the procedures set forth in sections one-  
36 g and one-h of this article.

37 (c) Where a finding or determination of the commis-  
38 sioner is protested only by the employer, and the  
39 employer does not prevail in its protest and, in the event  
40 the claimant is required to attend a hearing by subpoena  
41 or agreement of counsel or at the express direction of  
42 the commissioner, then such claimant in addition to  
43 reasonable traveling and other expenses shall be  
44 reimbursed for loss of wages incurred by the claimant  
45 in attending such hearing.

46 (d) Once an objection has been filed with the office of  
47 judges, the parties to the objection shall be offered an  
48 opportunity for mediation of the disputed issue by the  
49 commissioner. If all of the parties to the objection agree  
50 to mediation, the commissioner shall designate a deputy  
51 who was not involved in the original decision to act as  
52 mediator: *Provided*, That on issues related solely to the  
53 medical necessity of proposed medical treatment or  
54 diagnostic services, the commissioner shall offer the  
55 parties to the objection a selection of names of medical  
56 providers in the appropriate specialty. The parties shall  
57 then either agree upon a medical provider who shall act  
58 as mediator or, in the absence of an agreement, the  
59 commissioner shall select a medical provider who shall  
60 act as mediator. In cases where issues of medical  
61 necessity are intertwined with nonmedical treatment or  
62 nondiagnostic issues, both a medical provider and a  
63 designated deputy shall act as comediators and shall  
64 consider their respective issues. Neither shall be

65 empowered to overturn the decision of the other.

66 Upon entering into mediation, the parties shall inform  
67 the office of judges of that action and the office of judges  
68 shall stay further action on the objection.

69 The mediator shall solicit the positions of the parties  
70 and shall review such additional information as the  
71 parties or the commissioner shall furnish. The mediator  
72 shall then issue a decision in writing with the necessary  
73 findings of fact and conclusions of law to support that  
74 decision. If any party disagrees with the decision, that  
75 party may note its objection to the office of judges, the  
76 commissioner and the other parties, and the office of  
77 judges shall lift the stay on the original protest. The  
78 decision and any information introduced during the  
79 attempted mediation shall be subject to consideration by  
80 the office of judges in making its decision on the  
81 objection. Upon acceptance by the parties of the result  
82 of the mediation, the office of judges shall dismiss the  
83 objection with prejudice.

84 The mediator shall conduct the mediation in an  
85 informal manner and without regard to the formal rules  
86 of evidence and procedure. Once the parties agree to  
87 mediation, then the agreement cannot be withdrawn.

88 (e) The panel of medical providers who shall serve as  
89 mediators shall be selected and approved by the  
90 compensation programs performance council. A medical  
91 provider serving as a mediator shall have the same  
92 protections from liability as does the commissioner with  
93 regard to his or her decisions including coverage by the  
94 board of risk management which shall be provided by  
95 the workers' compensation division.

**§23-5-1b. Refusal to reopen claim; notice; objection.**

1 If, however, in any case in which application for  
2 further adjustment of a claim is filed under the next  
3 preceding section, it shall appear to the commissioner  
4 that such application fails to disclose a progression or  
5 aggravation in the claimant's condition, or some other  
6 fact or facts which were not theretofore considered by  
7 the commissioner in his or her former findings, and  
8 which would entitle such claimant to greater benefits  
9 than the claimant has already received, the commis-  
10 sioner shall, within a reasonable time, notify the

11 claimant and the employer that such application fails to  
12 establish a prima facie cause for reopening the claim.  
13 Such notice shall be in writing stating the reasons for  
14 denial and the time allowed for objection to such  
15 decision of the commissioner. The claimant may, within  
16 thirty days after receipt of such notice, object in writing  
17 to such finding and unless the objection is filed within  
18 such thirty-day period, no such objection shall be  
19 allowed, such time limitation being hereby declared to  
20 be a condition of the right to such objection and hence  
21 jurisdictional. Upon receipt of an objection, the commis-  
22 sioner or office of judges shall afford the claimant an  
23 evidentiary hearing as provided in section one or one-  
24 h of this article.

**§23-5-1h. Hearings on objections to commissioner's  
decisions by office of administrative law  
judges.**

1 On or after the first day of July, one thousand nine  
2 hundred ninety-one, objections to a commissioner's  
3 decision made pursuant to the provisions of section one  
4 of this article shall be filed with the office of judges.  
5 Upon receipt of an objection, the office of judges shall,  
6 within fifteen days from receipt thereof, set a time and  
7 place for the hearing of evidence and shall notify the  
8 commissioner of the filing of the objection. Hearings  
9 may be conducted at the county seat of the county  
10 wherein the injury occurred, or at any other place which  
11 may be agreed upon by the interested parties, and in  
12 the event the interested parties cannot agree, and it  
13 appears in the opinion of the chief administrative law  
14 judge or the chief administrative law judge's authorized  
15 representative that the ends of justice require the taking  
16 of evidence elsewhere, then at such place as the chief  
17 administrative law judge or such authorized represen-  
18 tative may direct, having due regard for the convenience  
19 of witnesses. The employer, the claimant and the  
20 commissioner shall be notified of such hearing at least  
21 ten days in advance, and the hearing shall be held  
22 within thirty days after the filing of the objection unless  
23 such hearing be postponed by agreement of the parties  
24 or by the chief administrative law judge or such  
25 authorized representative for good cause. The commis-  
26 sioner shall be a party to any proceeding under this

27 article which involves a claim chargeable against the  
28 workers' compensation fund, the disabled workers' relief  
29 fund or such other fund as may then be under the  
30 commissioner's management and control.

31 The office of judges shall keep full and complete  
32 records of all proceedings concerning a disputed claim.  
33 All testimony upon a disputed claim shall be recorded  
34 but need not be transcribed unless the claim is appealed  
35 or in such other circumstances as, in the opinion of the  
36 chief administrative law judge, may require such  
37 transcription. Upon receipt of notice of the filing of an  
38 objection, the commissioner shall forthwith forward to  
39 the chief administrative law judge all records, or copies  
40 of such records, in the commissioner's office which  
41 relate to the matter objected to. All such records or  
42 copies thereof and any evidence taken at hearings  
43 conducted by the office of judges shall constitute the  
44 record upon which the matter shall be decided. The  
45 office of judges shall not be bound by the usual common  
46 law or statutory rules of evidence. At any time within  
47 thirty days after hearing, if the chief administrative law  
48 judge or the chief administrative law judge's authorized  
49 representative is of the opinion that the facts have not  
50 been adequately developed at such hearing, he or she  
51 may order supplemental hearings or obtain such  
52 additional evidence as he or she deems warranted upon  
53 due notice to the parties.

54 All hearings shall be conducted as determined by the  
55 chief administrative law judge pursuant to the rules of  
56 practice and procedure promulgated pursuant to section  
57 one-g of this article. Upon consideration of the entire  
58 record, the chief administrative law judge or an  
59 administrative law judge within the office of judges  
60 shall, within thirty days after final hearing, render a  
61 decision affirming, reversing or modifying the commis-  
62 sioner's action. Said decision shall contain findings of  
63 fact and conclusions of law and shall be mailed to all  
64 interested parties.

**§23-5-6. Article applies to claims arising under §23-2-9.**

1 The provisions of this article shall also apply to all  
2 claims arising under section nine, article two of this  
3 chapter.



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

Originating in the House.

Takes effect from passage.

*Parrella E. Adams*  
.....  
Clerk of the Senate

*Donald Z. Hogg*  
.....  
Clerk of the House of Delegates

*Kell Rudette*  
.....  
President of the Senate

*[Handwritten signature]*  
.....  
Speaker of the House of Delegates

The within *is approved* this the *16<sup>th</sup>*  
day of *April*, 1993.

*[Handwritten signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/16/93

Time 1:05 pm