

S

SB 104

FILED

2005 FEB 18 P 3:52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
1st Extraordinary Session, 2005

ENROLLED

SENATE BILL NO. 1004

(By Senators Tomblin, Mr. President, and Sprouse
By Request of the Executive)

PASSED January 29, 2005

In Effect from Passage

FILED

2005 FEB 18 P 3:53

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 1004

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE
BY REQUEST OF THE EXECUTIVE)

[Passed January 29, 2005; in effect from passage.]

AN ACT to amend and reenact §4-11A-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-9-2 of said Code; to amend and reenact §11-10-3 of said Code; to amend said Code by adding thereto a new article, designated §11-13V-1, §11-13V-2, §11-13V-3, §11-13V-4, §11-13V-5, §11-13V-6, §11-13V-7, §11-13V-8, §11-13V-9, §11-13V-10, §11-13V-11, §11-13V-12, §11-13V-13, §11-13V-14, §11-13V-15, §11-13V-16 and §11-13V-17; to amend said Code by adding thereto a new section, designated §11-21-96; to amend and reenact §23-1-1, §23-1-1a, §23-1-1b, §23-1-1c, §23-1-1e, §23-1-11, §23-1-13, §23-1-14, §23-1-15, §23-1-17 and §23-1-19 of said Code; to amend said Code by adding thereto a new section, designated §23-1-1g; to amend and reenact §23-2-1, §23-2-1d, §23-2-2, §23-2-3, §23-2-4, §23-2-5, §23-2-5a and §23-2-9 of said Code; to amend and reenact §23-2A-1 of said Code; to amend said Code by adding thereto a new article, designated §23-2C-1, §23-2C-2, §23-2C-3, §23-2C-4, §23-2C-5, §23-2C-6, §23-2C-7,

§23-2C-8, §23-2C-9, §23-2C-10, §23-2C-11, §23-2C-12, §23-2C-13, §23-2C-14, §23-2C-15, §23-2C-16, §23-2C-17, §23-2C-18, §23-2C-19, §23-2C-20, §23-2C-21, §23-2C-22 and §23-2C-23; to amend said Code by adding thereto a new article, designated §23-2D-1, §23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9 and §23-2D-10; to amend and reenact §23-3-1 and §23-3-4 of said Code; to amend and reenact §23-4-1b, §23-4-1c, §23-4-1d, §23-4-1e, §23-4-3, §23-4-3b, §23-4-4, §23-4-6, §23-4-6a, §23-4-6b, §23-4-7, §23-4-7a, §23-4-7b, §23-4-8, §23-4-8a, §23-4-8b, §23-4-8c, §23-4-9, §23-4-10, §23-4-11, §23-4-12, §23-4-14, §23-4-15, §23-4-15a, §23-4-15b, §23-4-16, §23-4-16a, §23-4-17, §23-4-20, §23-4-24 and §23-4-25 of said Code; to amend and reenact §23-4A-1 and §23-4A-4 of said Code; to amend said Code by adding thereto a new section, designated §23-4A-9; to amend said Code by adding thereto a new section, designated §23-4B-9; to amend and reenact §23-4C-5 of said Code; to amend said Code by adding thereto a new section, designated §23-4C-6; to amend and reenact §23-5-1, §23-5-2, §23-5-3, §23-5-4, §23-5-5, §23-5-7, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12 and §23-5-15 of said Code; to amend and reenact §29-22A-10 and §29-22A-10b of said Code; to amend and reenact §33-1-2 and §33-1-10 of said Code; to amend and reenact §33-2-10 and §33-2-20 of said Code; to amend and reenact §33-41-2, §33-41-8 and §33-41-11 of said Code; and to amend and reenact §61-3-24e, §61-3-24f, §61-3-24g and §61-3-24h of said Code, all relating to workers' compensation generally; reducing the unfunded liability of the workers' compensation fund; providing existing and new revenue sources therefor, including new and existing taxes; providing for dissolution of workers' compensation commission; converting state agency to employer-owned mutual insurance company; providing for private carriers to offer workers' compensation insurance; providing for employees of the commission to be exempt from provisions of civil service coverage; providing for transfer of fraud investigation and prosecution unit and assets necessary for its opera-

tion; providing for transfer of certain workers' compensation commission functions, rights, responsibilities, employees and assets to the insurance commissioner and the industrial council; providing certain civil remedies to commission, mutual company and private carriers; providing for exemption from required coverage for certain employers who cover their employees under federal Longshore and Harbor Workers' Compensation Act; providing for payment periods to be other than quarterly; providing authority to enjoin employers from engaging in business when in default; requiring self-insured employers to obtain insurance for catastrophic risks; providing for transfer of authority over certain funds to the insurance commissioner; providing for statutory subrogation of medical and indemnity benefits; providing for expedited appeals to the office of judges; authorizing negotiation for subrogation claims; providing for capital and surplus requirements of employers' mutual insurance company; providing for election of a board of directors of employers' mutual insurance company; providing for establishment of claims index to assist insurers; providing for establishment and administration of certain funds and accounts in state treasury; providing for adverse risk assignment plan; providing, upon meeting of certain criteria, for issuance of proclamation by the governor; providing for preferential placement of any employee laid off after transfer of functions; providing certain retraining and other benefits; providing for novation of policies to new employers mutual insurance company; providing for requirements of a basic policy of workers' compensation insurance; providing for setting of industrial insurance rates; providing for collection of premiums; providing for transfer of Occupational Pneumoconiosis Board; providing for limitation of liability for insurers providing workers' compensation insurance and third-party administrators; providing for transfer of rules to be applicable to the industrial insurance market; providing for transfer of certain assets to new mutual insurance company; providing for termination of interdisciplinary examining board and health care advisory panel; providing

for selection of occupational pneumoconiosis board members by governor; providing for transfer of authority over occupational pneumoconiosis board; providing for negotiation of final settlement in workers' compensation claims; providing terms of employment for chief administrative law judge; making technical corrections throughout; providing internal effective dates; providing for civil administrative and criminal penalties; and making conforming changes throughout.

Be it enacted by the Legislature that:

That §4-11A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-9-2 of said Code be amended and reenacted; that §11-10-3 of said Code be amended and reenacted; that said Code be amended by adding thereto a new article, designated §11-13V-1, §11-13V-2, §11-13V-3, §11-13V-4, §11-13V-5, §11-13V-6, §11-13V-7, §11-13V-8, §11-13V-9, §11-13V-10, §11-13V-11, §11-13V-12, §11-13V-13, §11-13V-14, §11-13V-15, §11-13V-16 and §11-13V-17; that said Code be amended and reenacted by adding thereto a new section, designated §11-21-96; that §23-1-1, §23-1-1a, §23-1-1b, §23-1-1c, §23-1-1e, §23-1-11, §23-1-13, §23-1-14, §23-1-15, §23-1-17 and §23-1-19 of said Code be amended and reenacted; that said Code be amended by adding thereto a new section, designated §23-1-1g; that §23-2-1, §23-2-1d, §23-2-2, §23-2-3, §23-2-4, §23-2-5, §23-2-5a and §23-2-9 of said Code be amended and reenacted; that §23-2A-1 of said Code be amended and reenacted; that said Code be amended by adding thereto a new article, designated §23-2C-1, §23-2C-2, §23-2C-3, §23-2C-4, §23-2C-5, §23-2C-6, §23-2C-7, §23-2C-8, §23-2C-9, §23-2C-10, §23-2C-11, §23-2C-12, §23-2C-13, §23-2C-14, §23-2C-15, §23-2C-16, §23-2C-17, §23-2C-18, §23-2C-19, §23-2C-20, §23-2C-21, §23-2C-22 and §23-2C-23; that said Code be amended by adding thereto a new article, designated §23-2D-1, §23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9 and §23-2D-10; that §23-3-1 and §23-3-4 of said Code be amended and reenacted; that §23-4-1b, §23-4-1c, §23-4-1d,

§23-4-1e, §23-4-3, §23-4-3b, §23-4-4, §23-4-6, §23-4-6a, §23-4-6b, §23-4-7, §23-4-7a, §23-4-7b, §23-4-8, §23-4-8a, §23-4-8b, §23-4-8c, §23-4-9, §23-4-10, §23-4-11, §23-4-12, §23-4-14, §23-4-15, §23-4-15a, §23-4-15b, §23-4-16, §23-4-16a, §23-4-17, §23-4-20, §23-4-24 and §23-4-25 of said Code be amended and reenacted; that §23-4A-1 and §23-4A-4 of said Code be amended and reenacted; that said Code be amended by adding thereto a new section, designated §23-4A-9; that said Code be amended by adding thereto a new section, designated §23-4B-9; that §23-4C-5 of said Code be amended and reenacted; that said Code be amended by adding thereto a new section, designated §23-4C-6; that §23-5-1, §23-5-2, §23-5-3, §23-5-4, §23-5-5, §23-5-7, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12 and §23-5-15 of said Code be amended and reenacted; that §29-22A-10 and §29-22A-10b of said Code be amended and reenacted; that §33-1-2 and §33-1-10 of said Code be amended and reenacted; that §33-2-10 and §33-2-20 of said Code be amended and reenacted; that §33-41-2, §33-41-8 and §33-41-11 of said Code be amended and reenacted; and that §61-3-24e, §61-3-24f, §61-3-24g and §61-3-24h of said Code be amended and reenacted, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT MONEYS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia tobacco settlement medical trust fund until the first day of June, two thousand five, then to workers' compensation deficit reduction fund.

- 1 (a) The Legislature finds and declares that certain
- 2 dedicated revenues should be preserved in trust for the
- 3 purpose of stabilizing the state's health related programs
- 4 and delivery systems. It further finds and declares that
- 5 these dedicated revenues should be preserved in trust for
- 6 the purpose of educating the public about the health risks
- 7 associated with tobacco usage and establishing a program

8 designed to reduce and stop the use of tobacco by the
9 citizens of this state and in particular by teenagers.

10 (b) There is hereby created a special account in the state
11 treasury, designated the "West Virginia Tobacco Settle-
12 ment Medical Trust Fund", which shall be an interest-
13 bearing account and may be invested in the manner
14 permitted by section nine, article six, chapter twelve of
15 this code, with the interest income a proper credit to the
16 fund. Unless contrary to federal law, fifty percent of all
17 revenues received pursuant to the master settlement
18 agreement shall be deposited in this fund. Funds paid into
19 the account may also be derived from the following
20 sources:

21 (1) All interest or return on investment accruing to the
22 fund;

23 (2) Any gifts, grants, bequests, transfers or donations
24 which may be received from any governmental entity or
25 unit or any person, firm, foundation or corporation;

26 (3) Any appropriations by the Legislature which may be
27 made for this purpose; and

28 (4) Any funds or accrued interest remaining in the board
29 of risk and insurance management physicians' mutual
30 insurance company account created pursuant to section
31 seven, article twenty-f, chapter thirty-three of this code on
32 or after the first day of July, two thousand four.

33 (c) The moneys from the principal in the trust fund may
34 not be expended for any purpose, except that on the first
35 day of April, two thousand three, the treasurer shall
36 transfer to the board of risk and insurance management
37 physicians' mutual insurance company account created by
38 section seven, article twenty-f, chapter thirty-three of this
39 code, twenty-four million dollars from the West Virginia
40 tobacco settlement medical trust fund for use as the initial
41 capital and surplus of the physicians' mutual insurance
42 company created pursuant to said article. The remaining

43 moneys in the trust fund resulting from interest earned on
44 the moneys in the fund and the return on investments of
45 the moneys in the fund shall be available only upon
46 appropriation by the Legislature as part of the state
47 budget and expended in accordance with the provisions of
48 section three of this article.

49 (d) Notwithstanding the preceding subsections to the
50 contrary, the first thirty million dollars of all revenues
51 received after the thirtieth day of June, two thousand five,
52 pursuant to section IX(c)(1) of the tobacco master settle-
53 ment agreement shall in the fiscal year beginning the first
54 day of July, two thousand five, and each fiscal year
55 thereafter, be deposited in the workers' compensation debt
56 reduction fund established in the state treasury in section
57 five, article two-d, chapter twenty-three of this code.
58 Receipts in excess of thirty million dollars shall be depos-
59 ited as provided in section three of this article.

60 (e) Notwithstanding anything in this code to the con-
61 trary, strategic compensation payments received pursuant
62 to section IX(c)(2) of the tobacco master settlement
63 agreement, beginning in two thousand eight, shall be
64 deposited in their entirety in the workers' compensation
65 debt reduction fund.

CHAPTER 11. TAXATION.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

1 (a) The provisions of this article apply to the following
2 taxes imposed by this chapter:

3 (1) Inheritance and transfer taxes and estate taxes
4 imposed by article eleven of this chapter;

5 (2) Business registration tax imposed by article twelve of
6 this chapter;

7 (3) Minimum severance tax on coal imposed by article
8 twelve-b of this chapter;

- 9 (4) Corporate license tax imposed by article twelve-c of
10 this chapter;
- 11 (5) Business and occupation tax imposed by article
12 thirteen of this chapter;
- 13 (6) Severance and business privilege taxes imposed by
14 article thirteen-a of this chapter;
- 15 (7) Additional severance taxes imposed by article
16 thirteen-v of this chapter;
- 17 (8) Telecommunications tax imposed by article thir-
18 teen-b of this chapter;
- 19 (9) Gasoline and special fuels excise tax imposed by
20 article fourteen of this chapter;
- 21 (10) Motor fuels excise tax imposed by article fourteen-c
22 of this chapter;
- 23 (11) Motor carrier road tax imposed by article fourteen-a
24 of this chapter;
- 25 (12) Interstate fuel tax agreement authorized by article
26 fourteen-b of this chapter;
- 27 (13) Consumers sales and service tax imposed by article
28 fifteen of this chapter;
- 29 (14) Use tax imposed by article fifteen-a of this chapter;
- 30 (15) Tobacco products excise taxes imposed by article
31 seventeen of this chapter;
- 32 (16) Soft drinks tax imposed by article nineteen of this
33 chapter;
- 34 (17) Personal income tax imposed by article twenty-one
35 of this chapter;
- 36 (18) Business franchise tax imposed by article
37 twenty-three of this chapter;

38 (19) Corporation net income tax imposed by article
39 twenty-four of this chapter; and

40 (20) Health care provider taxes imposed by article
41 twenty-seven of this chapter.

42 (b) The provisions of this article also apply to the West
43 Virginia tax procedure and administration act in article
44 ten of this chapter and to any other articles of this chapter
45 when application is expressly provided by the Legislature.

46 (c) The provisions of this article also apply to municipal
47 sales and use taxes imposed pursuant to article thirteen-c,
48 chapter eight of this code; the charitable bingo fee imposed
49 by sections six and six-a, article twenty, chapter
50 forty-seven of this code; the charitable raffle fee imposed
51 by section seven, article twenty-one of said chapter; and
52 the charitable raffle boards and games fees imposed by
53 section three, article twenty-three of said chapter.

54 (d) Each and every provision of this article applies to the
55 articles of this chapter listed in subsections (a), (b) and (c)
56 of this section, with like effect, as if the provisions of this
57 article were applicable only to the tax and were set forth
58 in extenso in this article.

**ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION
ACT.**

§11-10-3. Application of this article.

1 (a) The provisions of this article apply to inheritance and
2 transfer taxes, estate tax and interstate compromise and
3 arbitration of inheritance and death taxes, business
4 registration tax, minimum severance tax on coal, corpo-
5 rate license tax, business and occupation tax, severance
6 tax, additional severance taxes, telecommunications tax,
7 interstate fuel tax, consumers sales and service tax, use
8 tax, tobacco products excise taxes, soft drinks tax, per-
9 sonal income tax, business franchise tax, corporation net
10 income tax, gasoline and special fuels excise tax, motor

11 fuels excise tax, motor carrier road tax, health care
12 provider taxes and tax relief for elderly homeowners and
13 renters administered by the state tax commissioner. This
14 article shall not apply to ad valorem taxes on real and
15 personal property or any other tax not listed in this
16 section, except that in the case of ad valorem taxes on real
17 and personal property, when any return, claim, statement
18 or other document is required to be filed, or any payment
19 is required to be made within a prescribed period or before
20 a prescribed date, and the applicable law requires delivery
21 to the office of the sheriff of a county of this state, the
22 methods prescribed in section five-f of this article for
23 timely filing and payment to the tax commissioner or state
24 tax department are the same methods utilized for timely
25 filing and payment with the sheriff.

26 (b) The provisions of this article apply to beer barrel tax
27 levied by article sixteen of this chapter; and to wine liter
28 tax levied by section four, article eight, chapter sixty of
29 this code.

30 (c) The provisions of this article apply to any other
31 article of this chapter when the application is expressly
32 provided by the Legislature.

33 (d) The provisions of this article apply to municipal sales
34 and use taxes imposed under article thirteen-c, chapter
35 eight of this code and collected by the tax commissioner.

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

§11-13V-1. Short title.

1 This article may be cited as the "Workers' Compensation
2 Debt Reduction Act of 2005". No inference, implication or
3 presumption of legislative construction shall be drawn or
4 made by reason of the location or grouping of any particu-
5 lar section or provision or portion of this article and no
6 legal effect shall be given to any descriptive matter of
7 headings relating to any part, section, subsection, subdivi-
8 sion or paragraph of this article.

§11-13V-2. Legislative intent and findings.

1 (a) *Legislative intent.* – It is the intent of the Legislature
2 in enacting this article to impose new, additional privilege
3 taxes on severing or producing natural resources in this
4 state and for the net proceeds from collection of the new
5 taxes to be dedicated to paying down the unfunded
6 liability in the workers' compensation fund, or paying debt
7 service on bonds sold to raise funds to pay down the
8 unfunded liability in the workers' compensation fund, or
9 for any combination of these two purposes.

10 (b) *Findings.* – The Legislature finds and declares that:

11 (1) The unfunded liability in the state workers' compen-
12 sation program exceeds three billion dollars;

13 (2) Until a fiscally responsible plan for paying this
14 unfunded liability is provided by the Legislature, the
15 condition of the workers' compensation fund will continue
16 to negatively affect economic development in this state;

17 (3) Until a fiscally responsible plan for paying this
18 unfunded liability is provided by the Legislature, the
19 Legislature will not be able to privatize workers' compen-
20 sation;

21 (4) Until a fiscally responsible plan for paying this
22 unfunded liability is provided, the Legislature will need to
23 annually appropriate dollars from the general revenue
24 fund of the state to pay down this unfunded liability and
25 to cover the annual shortfall between funds available to
26 pay workers' compensation benefits to injured workers
27 and premiums collected by the workers' compensation
28 fund from employers;

29 (5) In accordance with the constitution of this state and
30 decisions of the West Virginia supreme court of appeals,
31 the Legislature may enact a new tax and dedicate the net
32 collections of the tax to pay down this unfunded liability

33 or to pay debt service on bonds sold by the state to raise
34 funds to pay down this unfunded liability.

§11-13V-3. Definitions.

1 All definitions set forth in articles twelve-d and article
2 thirteen-a of this chapter apply to those defined terms that
3 also appear in this article, if applicable.

§11-13V-4. Imposition of tax.

1 (a) *Imposition of additional tax on privilege of severing*
2 *coal.* – Upon every person exercising the privilege of
3 engaging within this state in severing, extracting, reducing
4 to possession or producing coal for sale, profit or commer-
5 cial use, there is hereby imposed an additional annual
6 severance tax for exercising the privilege after the thirti-
7 eth day of November, two thousand five. The tax shall be
8 fifty-six cents per ton and the measure of the tax is tons of
9 clean coal severed or produced in this state by the tax-
10 payer after the thirtieth day of November, two thousand
11 five, for sale, profit or commercial use during the taxable
12 year. When the person mining the coal sells raw coal, the
13 measure of tax shall be ton of clean coal determined in
14 accordance with rules promulgated by the tax commis-
15 sioner as provided in article three, chapter twenty-nine-a
16 of this code. If this rule is filed for public comment before
17 the first day of July, two thousand five, the rule may be
18 promulgated as an emergency legislative rule. This tax
19 shall be in addition to all taxes imposed with respect to the
20 severance and production of coal in this state including,
21 but not limited to, the taxes imposed by articles twelve-d
22 and thirteen-a of this chapter and the taxes imposed by
23 sections eleven and thirty-two, article three, chapter
24 twenty-two of this code, if applicable.

25 (b) *Imposition of additional tax on privilege of severing*
26 *natural gas.* – For the privilege of engaging or continuing
27 within this state in the business of severing natural gas for
28 sale, profit or commercial use, there is hereby levied and

29 shall be collected from every person exercising this
30 privilege an additional annual privilege tax. The rate of
31 this additional tax shall be four and seven-tenths cents per
32 mcf of natural gas and the measure of the tax is natural
33 gas produced after the thirtieth day of November, two
34 thousand five, determined at the point where the produc-
35 tion privilege ends for purposes of the tax imposed by
36 section three-a, article thirteen-a of this chapter, and with
37 respect to which the tax imposed by section three-a of said
38 article thirteen-a is paid. The additional tax imposed by
39 this subsection shall be collected with respect to natural
40 gas produced after the thirtieth day of November, two
41 thousand five.

42 (c) *Imposition of additional tax on privilege of severing*
43 *timber.* - For the privilege of engaging or continuing
44 within this state in the business of severing timber for sale,
45 profit or commercial use, there is hereby levied and shall
46 be collected from every person exercising this privilege an
47 additional annual privilege tax equal to two and seventy-
48 eight hundredths percent of the gross value of the timber
49 produced, determined at the point where the production
50 privilege ends for purposes of the tax imposed by section
51 thirteen-b, article thirteen-a of this chapter and upon
52 which the tax imposed by section three-b of said article
53 thirteen-a is paid. The additional tax imposed by this
54 subsection shall be collected with respect to timber
55 produced after the thirtieth day of November, two thou-
56 sand five.

57 (d) *No pyramiding of tax burden.* - Each ton of coal and
58 each mcf of natural gas severed in this state after the
59 effective date of the taxes imposed by this section shall be
60 included in the measure of a tax imposed by this section
61 only one time.

62 (e) *Effect on utility rates.* - The public service commis-
63 sion shall, upon the application of any public utility that,
64 as of the effective date of the taxes imposed by this
65 section, is not currently making periodic adjustments to its

66 approved rates and charges to reflect changes in its fuel
67 costs because the mechanism historically used to make
68 such periodic adjustments is suspended by an order of the
69 commission, allows such utility to defer, for future recovery
70 from its customers, any increase in its costs attributable to
71 the taxes imposed by this section upon: coal and natural
72 gas severed in this state and utilized in the production of
73 electricity generated or produced in this state and sold to
74 customers in this state; coal and natural gas severed in this
75 state and utilized in the production of electricity not
76 generated or produced in this state that is sold to custom-
77 ers in this state; and natural gas severed in this state that
78 is sold to customers in this state.

79 (f) *Dedication of new taxes.* – The net amount of all
80 monies received by the tax commissioner from collection
81 of the taxes imposed by this section, including any inter-
82 est, additions to tax, or penalties collected with respect to
83 these taxes pursuant to article ten, chapter eleven of this
84 code, shall be deposited in the workers' compensation debt
85 reduction fund created in article two-d, chapter twenty-
86 three of this code. As used in this section, "net amount of
87 all taxes received by the tax commissioner" means the
88 gross amount received by the tax commissioner less the
89 amount of any refunds paid for overpayment of the taxes
90 imposed by this article, including the amount of any
91 interest on the overpayment amount due the taxpayer
92 under the provisions of section fourteen, article ten of this
93 chapter.

94 (g) *Sunset expiration date of taxes.* – The new taxes
95 imposed by this section shall expire and not be imposed
96 with respect to privileges exercised on and after the first
97 day of the month following the month in which the
98 governor certifies to the Legislature that: (1) The revenue
99 bonds issued pursuant to article two-a, chapter twenty-
100 three of this code, have been retired, or payment of the
101 debt service provided for; and (2) that an independent
102 certified actuary has determined that the unfunded

103 liability of the old fund, as defined in chapter twenty-three
104 of this code, has been paid or provided for in its entirety.
105 Expiration of the taxes imposed in this section as provided
106 in this subsection shall not relieve any person from
107 payment of any tax imposed with respect to privileges
108 exercised before the expiration date.

§11-13V-5. Accounting periods and methods of accounting.

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

7 (b) *Change of taxable year.* – If a taxpayer's taxable year
8 is changed for federal income tax purposes, taxpayer's
9 taxable year for purposes of this article is similarly
10 changed. The taxpayer shall provide a copy of the autho-
11 rization for the change from the internal revenue service,
12 with taxpayer's annual return for the taxable year filed
13 under this article.

14 (c) *Methods of accounting same as federal.* –

15 (1) *Same as federal.* – A taxpayer's method of accounting
16 under this article shall be the same as the taxpayer's
17 method of accounting for federal income tax purposes. In
18 the absence of any method of accounting for federal
19 income tax purposes, the accrual method of accounting
20 shall be used, unless the tax commissioner, in writing,
21 consents to the use of another method. Accrual basis
22 taxpayers may deduct bad debts only in the year to which
23 they relate.

24 (2) *Change of accounting methods.* – If a taxpayer's
25 method of accounting is changed for federal income tax
26 purposes, the taxpayer's method of accounting for pur-
27 poses of this article is similarly changed. The taxpayer
28 shall provide a copy of the authorization for the change

29 from the internal revenue service with its annual return
30 for the taxable year filed under this article.

31 (d) *Adjustments.* – In computing a taxpayer's liability for
32 tax for any taxable year under a method of accounting
33 different from the method under which the taxpayer's
34 liability for tax under this article for the previous year was
35 computed, there shall be taken into account those adjust-
36 ments which are determined, under rules promulgated by
37 the tax commissioner in accordance with article three,
38 chapter twenty-nine-a of this code, to be necessary solely
39 by reason of the change in order to prevent amounts from
40 being duplicated or omitted.

§11-13V-6. Time for filing annual returns and other documents.

1 On or before the expiration of one month after the end of
2 the taxable year, every taxpayer subject to a tax imposed
3 by this article shall make and file an annual return for the
4 entire taxable year showing all information the tax
5 commissioner requires and computing the amount of taxes
6 due under this article for the taxable year. Returns made
7 on the basis of a calendar year shall be filed on or before
8 the thirty-first day of January following the close of the
9 calendar year. Returns made on the basis of a fiscal year
10 shall be filed on or before the last day of the first month
11 following the close of the fiscal year.

**§11-13V-7. Periodic installment payments of taxes imposed by
this article; exceptions.**

1 (a) *General rule.* – Except as provided in subsection (b)
2 of this section, taxes levied by this article are due and
3 payable in periodic installments as follows:

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

9 (2) *Tax of more than one thousand dollars per month.* –
10 For taxpayers whose aggregate estimated tax liability
11 under this article and article thirteen-a of this chapter
12 exceeds one thousand dollars per month, the tax is due and
13 payable in monthly installments on or before the last day
14 of the month following the month in which the tax ac-
15 crued: *Provided*, That the installment payment otherwise
16 due under this subdivision on or before the thirtieth day of
17 June each year shall be remitted to the tax commissioner
18 on or before the fifteenth day of June each year. When this
19 subdivision applies, the taxpayer shall, on or before the
20 due date specified in this subdivision, make out an esti-
21 mate of the tax for which the taxpayer is liable for the
22 preceding month, sign the estimate and mail it together
23 with a remittance, in the form prescribed by the tax
24 commissioner, of the amount of tax due to the office of the
25 tax commissioner: *Provided, however*, That the installment
26 payment otherwise due under this paragraph on or before
27 the thirtieth day of June each year shall be remitted to the
28 tax commissioner on or before the fifteenth day of June.

29 (3) *Tax of one thousand dollars per month or less.* – For
30 taxpayers whose estimated tax liability under this article
31 is one thousand dollars per month or less, the tax is due
32 and payable in quarterly installments on or before the last
33 day of the month following the quarter in which the tax
34 accrued. When this subdivision applies, the taxpayer
35 shall, on or before the last day of the fourth, seventh and
36 tenth months of the taxable year, make out an estimate of
37 the tax for which the taxpayer is liable for the preceding
38 quarter, sign the same and mail it together with a remit-
39 tance, in the form prescribed by the tax commissioner, of
40 the amount of tax due to the office of the tax commis-
41 sioner.

42 (b) *Exception.* – Notwithstanding the provisions of
43 subsection (a) of this section, the tax commissioner, if he
44 or she considers it necessary to ensure payment of the tax,
45 may require the return and payment under this section for

46 periods of shorter duration than those prescribed in
47 subsection (a) of this section.

48 (c) *Remittance by electronic funds transfer.* – When the
49 taxpayer's annual aggregate liability for tax under this
50 article and article thirteen-a of this chapter exceeds fifty
51 thousand dollars for the prior tax year, payments of
52 estimated tax required by this article and article thirteen-
53 a during the then current tax year shall be by electronic
54 funds transfer, in accordance with rules of the tax com-
55 missioner and rules of the state treasurer, except as
56 otherwise permitted by the tax commissioner.

§11-13V-8. Extension of time for filing returns.

1 The tax commissioner may, upon written request
2 received on or prior to the due date of the annual return or
3 any periodic estimate, grant a reasonable extension of time
4 for filing any return or other document required by this
5 article, upon such terms as he or she may by rule prescribe,
6 or by contract require, if good cause satisfactory to the tax
7 commissioner is provided by the taxpayer.

§11-13V-9. Extension of time for paying tax.

1 (a) *Amount determined on return.* – The tax commis-
2 sioner may extend the time for payment of the amount of
3 the tax shown, or required to be shown, on any return
4 required by this article (or any periodic installment
5 payments), for a reasonable period not to exceed six
6 months from the date fixed for payment thereof.

7 (b) *Amount determined as deficiency.* – Under rules
8 prescribed by the tax commissioner in accordance with the
9 provisions of article three, chapter twenty-nine-a of this
10 code, the commissioner may extend the time for the
11 payment of the amount determined as a deficiency of the
12 taxes imposed by this article for a period not to exceed
13 eighteen months from the date fixed for payment of the
14 deficiency. In exceptional cases, a further period of time
15 not to exceed twelve months may be granted. An exten-

16 sion under this subsection may be granted only where it is
17 shown to the satisfaction of the tax commissioner that
18 payment of a deficiency upon the date fixed for the
19 payment thereof will result in undue hardship to the
20 taxpayer.

21 (c) *No extension for certain deficiencies.* – No extension
22 may be granted under this section for any deficiency if the
23 deficiency is due to negligence, to intentional disregard of
24 rules and regulations, or to fraud with intent to evade tax.

§11-13V-10. Place for filing returns or other documents.

1 Tax returns, statements or other documents, or copies
2 thereof, required by this article, or rules promulgated by
3 the commissioner, shall be filed with the tax commissioner
4 by delivery, in person or by mail, to his or her office in
5 Charleston, West Virginia: *Provided*, That the tax commis-
6 sioner may, by rules, prescribe the place and other means
7 of delivery for filing such returns, statements, or other
8 documents, or copies thereof.

§11-13V-11. Time and place for paying tax shown on returns.

1 (a) *General rule.* – The person required to make the
2 annual return required by this article shall, without
3 assessment or notice and demand from the tax commis-
4 sioner, pay the tax at the time and place fixed for filing the
5 return (determined without regard to any extension of
6 time for filing the return).

7 (b) *Date fixed for payment of tax.* – The date fixed for
8 payment of the taxes imposed by this article shall be
9 deemed to be a reference to the last day fixed for the
10 payment (determined without regard to any extension of
11 time for paying the tax).

12 (c) *Terms of extension.* – Any extension of time for
13 payment of tax under this section may be granted upon
14 such terms as the tax commissioner may, by rule prescribe,
15 or by contract require.

§11-13V-12. Signing of returns and other documents.

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

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

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

19 (d) *Signing of limited liability company returns.* – The
20 return of a limited liability company shall be signed by
21 any one of its authorized members. The fact that a mem-
22 ber's name is signed on the return shall be prima facie
23 evidence that the member is authorized to sign the return
24 on behalf of the limited liability company.

25 (e) *Signature presumed authentic.* – The fact that an
26 individual's name is signed to a return, statement or other
27 document shall be prima facie evidence for all purposes
28 that the return, statement or other document was actually
29 signed by him or her.

30 (f) *Verification of returns.* – Except as otherwise pro-
31 vided by the tax commissioner, any return, declaration or
32 other document required to be made under this article
33 shall contain or be verified by a written declaration that it
34 is made under the penalties of perjury.

§11-13V-13. Bond of taxpayer may be required.

1 (a) Whenever it is deemed necessary to ensure compli-
2 ance with this article, the tax commissioner may require
3 any taxpayer to post a cash or corporate surety bond.

4 (b) The amount of the bond shall be fixed by the tax
5 commissioner but, except as provided in subsection (c) of
6 this section, shall not be greater than three times the
7 average quarterly liability of taxpayers filing returns for
8 quarterly periods, five times the average monthly liability
9 of taxpayers required to file returns for monthly periods,
10 or two times the average periodic liability of taxpayers
11 permitted or required to file returns for other than
12 monthly or quarterly periods.

13 (c) Notwithstanding the provisions of subsection (b) of
14 this section, no bond required under this section shall be
15 less than five hundred dollars.

16 (d) The amount of the bond may be increased or de-
17 creased by the tax commissioner at any time subject to the
18 limitations provided in this section.

19 (e) The tax commissioner may bring an action for a
20 restraining order or a temporary or permanent injunction
21 to restrain or enjoin the operation of a taxpayer's business
22 until the bond is posted and any delinquent tax, including
23 applicable interest and additions to tax has been paid.
24 This action may be brought in the circuit court of
25 Kanawha County or in the circuit court of any county
26 having jurisdiction over the taxpayer.

§11-13V-14. Collection of tax; agreement for processor to pay tax due from severor.

1 (a) *General.* — In the case of natural resources, other than
2 natural gas, where the tax commissioner finds that it
3 would facilitate and expedite the collection of the taxes
4 imposed by this article, the tax commissioner may autho-
5 rize the taxpayer processing the natural resource to report

6 and pay the tax which would be due from the taxpayer
7 severing the natural resources. The agreement shall be in
8 the form prescribed by or acceptable to the tax commis-
9 sioner.

10 (1) The agreement must be signed:

11 (A) By the owner, if the taxpayer is a natural person;

12 (B) In the case of a partnership, limited liability com-
13 pany or association, by a partner or member;

14 (C) In the case of a corporation, by an executive officer
15 or some person specifically authorized by the corporation
16 to sign the agreement.

17 (2) The agreement may be terminated by any party to the
18 agreement upon giving thirty days' written notice to the
19 other parties to the agreement: *Provided*, That the tax
20 commissioner may terminate the agreement immediately
21 upon written notice to the other parties when either the
22 taxpayer processing the natural resource or the taxpayer
23 severing the natural resource fails to comply with the
24 terms of the agreement.

25 (b) *Natural gas.* -

26 (1) In the case of natural gas, except for those cases:

27 (A) Where the person severing (or both severing and
28 processing) the natural gas will sell the gas to the ultimate
29 consumer; or

30 (B) Where the tax commissioner determines that the
31 collection of taxes due under this article would be accom-
32 plished in a more efficient and effective manner through
33 the severor, or severor and processor, remitting the taxes,
34 the first person to purchase the natural gas after it has
35 been severed, or in the event that the natural gas has been
36 severed and processed before the first sale, the first person
37 to purchase natural gas after it has been severed and
38 processed, shall be liable for the collection of the taxes

39 imposed by this article. That person shall collect the taxes
40 imposed from the person severing (or severing and pro-
41 cessing) the natural gas, and that person shall remit the
42 taxes to the tax commissioner;

43 (C) In those cases where the person severing (or severing
44 and processing) the natural gas sells the gas to the ultimate
45 consumer, the person so severing (or severing and process-
46 ing) the natural gas shall be liable for the taxes imposed by
47 this article;

48 (D) In those cases where the tax commissioner deter-
49 mines that the collection of the taxes due under this article
50 from the person severing the natural gas, or severing and
51 processing the natural gas would be accomplished in a
52 more efficient and effective manner through the severor
53 (or severor and processor) remitting the taxes, the tax
54 commissioner shall set out his or her determination in
55 writing, stating his or her reasons for so finding, and so
56 advise the severor (or severor and processor) at least
57 fifteen days in advance of the first reporting period for
58 which the commissioner's determination is effective.

59 (2) On or before the last day of the month following each
60 taxable calendar month, the person first purchasing
61 natural gas, as described in subdivision (1) of this subsec-
62 tion, shall report purchases of natural gas during the
63 taxable month, showing the quantities of gas purchased,
64 the price paid, the date of purchase, and any other infor-
65 mation considered necessary by the tax commissioner for
66 the administration of the tax imposed by this article, and
67 shall pay the amount of tax due, on forms prescribed by
68 the tax commissioner.

69 (3) On or before the last day of the month following each
70 taxable calendar month, each person severing (or severing
71 and processing) natural gas, shall report the sales of
72 natural gas, showing the name and address of the person
73 to whom sold, the quantity of gas sold, the date of sale and
74 the sales price on forms prescribed by the tax commis-
75 sioner.

§11-13V-15. Records.

1 (a) *General.* – Every person liable for reporting or paying
2 tax under this article shall keep records, receipts, invoices
3 and other pertinent papers in the form required by the tax
4 commissioner.

5 (b) *Period of retention.* – Every taxpayer shall keep the
6 records for a tax year for a period of not less than three
7 years after the annual return is filed under this article,
8 unless the tax commissioner, in writing, authorizes their
9 earlier destruction. An extension of time for making an
10 assessment automatically extends the time period for
11 keeping the records for all years subject to audit covered
12 in the agreement for extension of time.

13 (c) *Special rule for purchasers of standing timber or of*
14 *logs.* – In addition to the records required by subsection (a)
15 of this section, every person purchasing standing timber,
16 logs or wood products sawn or chipped in conjunction
17 with a timber harvesting operation in this state shall
18 obtain from the person from whom the standing timber,
19 logs or wood products sawn or chipped in conjunction
20 with a timbering harvest operation are purchased a true
21 copy of the seller's then current business registration
22 certificate issued under article twelve of this chapter or a
23 copy of federal form 1099 for the year of the purchase.
24 When the seller is a person not required by this chapter to
25 have a business registration certificate, the purchaser shall
26 obtain an affidavit from the seller:

27 (1) Stating that the seller does not have a business
28 registration certificate and that the seller is not required
29 by this chapter to have a business registration certificate;

30 (2) Listing the seller's social security number or federal
31 employer identification number; and

32 (3) Listing the seller's current mailing address. The tax
33 commissioner may develop a form for this affidavit.

§11-13V-16. General procedure and administration.

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

§11-13V-17. Crimes and penalties.

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

ARTICLE 21. PERSONAL INCOME TAX.**§11-21-96. Dedication of personal income tax proceeds.**

1 (a) There is hereby dedicated an annual amount of forty-
2 five million dollars from annual collections of the tax
3 imposed by this article for payment of the unfunded
4 liability of the current workers compensation fund. No
5 portion of this amount may be pledged for payment of
6 debt service on revenue bonds issued pursuant to article
7 two-d, chapter twenty-three of this code.

8 (b) Notwithstanding any other provision of this code to
9 the contrary, beginning in January of two thousand six,
10 forty-five million dollars from collections of the tax
11 imposed by this article shall be deposited each calendar
12 year to the credit of the old fund created in article two-c,
13 chapter twenty-three of this code, in accordance with the
14 following schedule. Each calendar month, except for July,
15 August and September each year, five million dollars shall
16 be transferred, on or before the twenty-eighth day of the
17 month, to the workers' compensation debt reduction fund
18 created in article two-d, chapter twenty-three of this code.

19 (c) *Expiration.* – The transfers required by this section
20 shall continue to be made until the governor certifies to
21 the Legislature that an independent actuary study deter-
22 mined that the unfunded liability of the old fund, as
23 defined in chapter twenty-three of this code, has been paid
24 or provided for in its entirety. No transfer pursuant to this
25 section shall be made thereafter.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Workers' compensation commission created; findings.

1 (a) The Legislature finds that a deficit exists in the
2 workers' compensation fund of such critical proportions
3 that it constitutes an imminent threat to the immediate
4 and long-term solvency of the fund and constitutes a
5 substantial deterrent to the economic development of this
6 state. The Legislature further finds that addressing the
7 workers' compensation crisis requires the efforts of all
8 persons and entities involved and resolution of the crisis is
9 in the best interest of the public. Modification to the rate
10 system, alteration of the benefit structure, improvement of
11 current management practices and changes in perception
12 must be merged into a unified effort to make the workers'
13 compensation system viable and solvent through the
14 mutualization of the system and the opening of the market
15 to private workers' compensation insurance carriers. It
16 was and remains the intent of the Legislature that the
17 amendments to this chapter enacted in the year two
18 thousand three be applied from the date upon which the
19 enactment was made effective by the Legislature. The
20 Legislature finds that an emergency exists as a result of
21 the combined effect of this deficit, other state budgetary
22 deficits and liabilities and other grave social and economic
23 circumstances currently confronting the state and that
24 unless the changes provided by the enactment of the
25 amendments to this chapter, as well as other legislation
26 designed to address the problem are made effective

27 immediately, the fiscal stability of this state will suffer
28 irreparable harm. Accordingly, the Legislature finds that
29 the need of the citizens of this state for the protection of
30 the state treasury and the solvency of the workers' com-
31 pensation funds requires the limitations on any expecta-
32 tions that may have arisen from prior enactments of this
33 chapter.

34 (b) It is the further intent of the Legislature that this
35 chapter be interpreted so as to assure the quick and
36 efficient delivery of indemnity and medical benefits to
37 injured workers at a reasonable cost to the employers who
38 are subject to the provisions of this chapter. It is the
39 specific intent of the Legislature that workers' compensa-
40 tion cases shall be decided on their merits and that a rule
41 of "liberal construction" based on any "remedial" basis of
42 workers' compensation legislation shall not affect the
43 weighing of evidence in resolving such cases. The workers'
44 compensation system in this state is based on a mutual
45 renunciation of common law rights and defenses by
46 employers and employees alike. Employees' rights to sue
47 for damages over and above medical and health care
48 benefits and wage loss benefits are to a certain degree
49 limited by the provisions of this chapter and employers'
50 rights to raise common law defenses such as lack of
51 negligence, contributory negligence on the part of the
52 employee, and others, are curtailed as well. Accordingly,
53 the Legislature hereby declares that any remedial compo-
54 nent of the workers' compensation laws is not to cause the
55 workers' compensation laws to receive liberal construction
56 that alters in any way the proper weighing of evidence as
57 required by section one-g, article four of this chapter.

58 (c) The "workers' compensation division of the bureau of
59 employment programs" is, on or after the first day of
60 October, two thousand three, reestablished, reconstituted
61 and continued as the workers' compensation commission,
62 an agency of the state. The purpose of the commission is
63 to ensure the fair, efficient and financially stable adminis-

64 tration of the workers' compensation system of the state of
65 West Virginia. The powers and duties heretofore imposed
66 upon the workers' compensation division and the commis-
67 sioner of the bureau of employment programs as they
68 relate to workers' compensation are hereby transferred to
69 and imposed upon the workers' compensation commission
70 and its executive director in the manner prescribed by this
71 chapter.

72 (d) It is the intent of the Legislature that the transfer of
73 the administration of the workers' compensation system of
74 this state from the workers' compensation division under
75 the commissioner of the bureau of employment programs
76 to the workers' compensation commission under its
77 executive director and the workers' compensation board of
78 managers is to become effective the first day of October,
79 two thousand three. Any provisions of the enactment of
80 Enrolled Senate Bill No. 2013 in the year two thousand
81 three relating to the transfer of the administration of the
82 workers' compensation system of this state that conflict
83 with the intent of the Legislature as described in this
84 subsection shall, to that extent, become operative on the
85 first day of October, two thousand three, and until that
86 date, prior enactments of this code in effect on the effec-
87 tive date of Enrolled Senate Bill No. 2013 relating to the
88 administration of the workers' compensation system of
89 this state, whether amended and reenacted or repealed by
90 the passage of Enrolled Senate Bill No. 2013, have full
91 force and effect. All provisions of the enactment of
92 Enrolled Senate Bill No. 2013 in the year two thousand
93 three relating to matters other than the transfer of the
94 administration of the workers' compensation system of
95 this state shall become operative on the effective date of
96 that enactment, unless otherwise specifically provided in
97 that enactment.

**§23-1-1a. Workers' compensation board of managers; appoint-
ment; composition; qualifications; terms; chairper-
son; meetings and quorum; compensation and
travel expenses; powers and duties.**

1 (a) On the first day of October, two thousand three, the
2 compensation programs performance council heretofore
3 established in article three, chapter twenty-one-a of this
4 code is hereby abolished and there is hereby created the
5 "workers' compensation board of managers", which may
6 also be referred to as "the board of managers" or "the
7 board".

8 (b) (1) The board shall consist of eleven voting members
9 as follows:

10 (A) The governor or his or her designee;

11 (B) The chief executive officer of the West Virginia
12 investment management board; if required to attend more
13 than one meeting per month, he or she may send a designee
14 to the additional meetings;

15 (C) The executive director of the West Virginia develop-
16 ment office; if required to attend more than one meeting
17 per month, he or she may send a designee to the additional
18 meetings; and

19 (D) Eight members appointed by the governor with the
20 advice and consent of the Senate who meet the require-
21 ments and qualifications prescribed in subsections (c) and
22 (d) of this section: *Provided*, That the members serving on
23 the compensation programs performance council hereto-
24 fore established in article three, chapter twenty-one-a of
25 this code on the effective date of the enactment of this
26 section in two thousand three are hereby appointed as
27 members of the board of managers subject to the provi-
28 sions of subdivision (1), subsection (c) of this section.

29 (2) Two members of the West Virginia Senate and two
30 members of the West Virginia House of Delegates shall
31 serve as advisory members of the board and are not voting
32 members. The governor shall appoint the legislative
33 members to the board. No more than three of the legisla-
34 tive members may be of the same political party.

35 (c) (1) The initial eight appointed voting members of the
36 board of managers shall consist of the members appointed
37 under the provisions of paragraph (D), subdivision (1),
38 subsection (a) of this section and the remaining members
39 appointed pursuant to the provisions of subsection (d) of
40 this section. The term of each of the initial appointed
41 members shall expire on the thirty-first day of December,
42 two thousand five.

43 (2) Effective the first day of January, two thousand six,
44 if the commission continues, eight members shall be
45 appointed by the governor with the advice and consent of
46 the Senate for terms that begin the first day of January,
47 two thousand six, and expire as follows:

48 Two members shall be appointed for a term ending the
49 thirtieth day of June, two thousand seven;

50 Three members shall be appointed for a term ending the
51 thirtieth day of June, two thousand eight; and

52 Three members shall be appointed for a term ending the
53 thirtieth day of June, two thousand nine.

54 (3) Except for appointments to fill vacancies, each
55 subsequent appointment shall be for a term ending the
56 thirtieth day of June of the fourth year following the year
57 the preceding term expired. In the event a vacancy occurs,
58 it shall be filled by appointment for the unexpired term.
59 A member whose term has expired shall continue in office
60 until a successor has been duly appointed and qualified.
61 No member of the board may be removed from office by
62 the governor except for official misconduct, incompetency,
63 neglect of duty or gross immorality.

64 (4) No appointed member may be a candidate for or hold
65 elected office. Members may be reappointed for no more
66 than two full terms.

67 (d) Except for those initially appointed under the
68 provisions of paragraph (D), subdivision (1), subsection (b)
69 of this section, each of the appointed voting members of
70 the board shall be appointed based upon his or her demon-

71 strated knowledge and experience to effectively accom-
72 plish the purposes of this chapter. They shall meet the
73 minimum qualifications as follows:

74 (1) Each shall hold a baccalaureate degree from an
75 accredited college or university: *Provided*, That no more
76 than three of the appointed voting members may serve
77 without a baccalaureate degree from an accredited college
78 or university if the member has a minimum of fifteen
79 years' experience in his or her field of expertise as required
80 in subdivision (2) of this subsection;

81 (2) Each shall have a minimum of ten years' experience
82 in his or her field of expertise. The governor shall consider
83 the following guidelines when determining whether
84 potential candidates meet the qualifications of this
85 subsection: Expertise in insurance claims management;
86 expertise in insurance underwriting; expertise in the
87 financial management of pensions or insurance plans;
88 expertise as a trustee of pension or trust funds of more
89 than two hundred beneficiaries or three hundred million
90 dollars; expertise in workers' compensation management;
91 expertise in loss prevention and rehabilitation; expertise
92 in occupational medicine demonstrated by licensure as a
93 medical doctor in West Virginia and experience, board
94 certification or university affiliation; or expertise in
95 similar areas of endeavor;

96 (3) At least one shall be a certified public accountant
97 with financial management or pension or insurance audit
98 expertise; at least one shall be an attorney with financial
99 management experience; and one shall be an academician
100 holding an advanced degree from an accredited college or
101 university in business, finance, insurance or economics.

102 (e) Each member of the board shall have a fiduciary
103 responsibility to the commission and all workers' compen-
104 sation funds and shall assure the proper administration of
105 the funds in a fiscally responsible manner.

106 (f) The board shall elect one member to serve as chair-
107 person. The chairperson shall serve for a one-year term
108 and may serve more than one consecutive term. The board
109 shall hold meetings at the request of the chairperson or at
110 the request of at least three of the members of the board,
111 but no less frequently than once every three months. The
112 chairperson shall determine the date and time of each
113 meeting. Six members of the board constitute a quorum
114 for the conduct of the business of the board. No vacancy
115 in the membership of the board shall impair the right of a
116 quorum to exercise all the rights and perform all the duties
117 of the board. No action shall be taken by the board except
118 upon the affirmative vote of six members of the board.

119 (g) Notwithstanding any provision of article seven,
120 chapter six of this code to the contrary, the board shall
121 establish the salary of the executive director. The board
122 shall establish a set of performance measurements to
123 evaluate the performance of the executive director in
124 fulfilling his or her duties as prescribed in this chapter and
125 shall annually rate the executive director's performance
126 according to the established measurements and may adjust
127 his or her annual salary in accordance with that perfor-
128 mance rating.

129 (h) (1) Each voting appointed member of the board shall
130 receive compensation of not more than three hundred fifty
131 dollars per day for each day during which he or she is
132 required to and does attend a meeting of the board.

133 (2) Each voting appointed member of the board is
134 entitled to be reimbursed for actual and necessary ex-
135 penses incurred for each day or portion thereof engaged in
136 the discharge of official duties in a manner consistent with
137 guidelines of the travel management office of the depart-
138 ment of administration.

139 (i) Each member of the board shall be provided appro-
140 priate liability insurance, including, but not limited to,
141 errors and omissions coverage, without additional pre-

142 mium, by the state board of risk and insurance manage-
143 ment established pursuant to article twelve, chapter
144 twenty-nine of this code.

145 (j) The board of managers shall:

146 (1) Review and approve, reject or modify recommenda-
147 tions from the executive director for the development of
148 overall policy for the administration of this chapter;

149 (2) In consultation with the executive director, propose
150 legislation and establish operating guidelines and policies
151 designed to ensure the effective administration and
152 financial viability of the workers' compensation system of
153 West Virginia;

154 (3) Review and approve, reject or modify rules that are
155 proposed by the executive director for operation of the
156 workers' compensation system before the rules are filed
157 with the secretary of state. The rules adopted by the board
158 are not subject to sections nine through sixteen, inclusive,
159 article three, chapter twenty-nine-a of this code. The
160 board shall follow the remaining provisions of said chapter
161 for giving notice to the public of its actions and for holding
162 hearings and receiving public comments on the rules;

163 (4) In accordance with the laws, rules and regulations of
164 West Virginia and the United States government, establish
165 and monitor performance standards and measurements to
166 ensure the timeliness and accuracy of activities performed
167 under the workers' compensation laws and rules;

168 (5) Review and approve, reject or modify all classifica-
169 tions of occupations or industries, premium rates and
170 taxes, administrative charges, rules and systems of rating,
171 rating plans, raterevisions, deficit management and deficit
172 reduction assessments and merit rating for employers
173 covered by this chapter. The executive director shall
174 provide all information required for the board's review;

175 (6) In conjunction with the executive director initiate,
176 oversee and review all independent financial and actuarial

177 reviews of the commission. The board shall employ an
178 internal auditor for the purpose of examining internal
179 compliance with the provisions of this chapter. The
180 internal auditor shall be employed directly by the board.
181 The internal auditor shall submit copies of all reports
182 prepared by the internal auditor for the board to the joint
183 committee on government and finance within five days of
184 submitting or making the report to the board, by filing the
185 report with the legislative librarian;

186 (7) Approve the allocation of sufficient administrative
187 resources and funding to efficiently operate the workers'
188 compensation system of West Virginia. To assure efficient
189 operation, the board shall direct the development of a plan
190 for the collections performed under section five-a, article
191 two of this chapter. The plan for collections shall maxi-
192 mize ratio of dollars potentially realized by the collection
193 proceeding to the dollars invested in collection activity;

194 (8) Review and approve, reject or modify the budget
195 prepared by the executive director for the operation of the
196 commission. The budget shall include estimates of the
197 costs and necessary expenditures of the commission in the
198 discharge of all duties imposed by this chapter as well as
199 the cost of providing offices, furniture, equipment and
200 supplies to all commission officers and employees;

201 (9) In consultation with the executive director, approve
202 the designation of health care providers to make decisions
203 for the commission regarding appropriateness of medical
204 services;

205 (10) Require the workers' compensation commission to
206 develop, maintain and use an effective program of return-
207 to-work services for employers and workers;

208 (11) Require the workers' compensation commission to
209 develop, maintain and use thorough and efficient claims
210 management procedures and processes and fund manage-
211 ment in accordance with the generally accepted practices
212 of the workers' compensation insurance industry;

213 (12) Consider such other matters regarding the workers'
214 compensation system as the governor, executive director
215 or any member of the board may desire;

216 (13) Review and approve, reject or modify standards
217 recommended by the executive director to be considered
218 by the commission in making decisions on all levels of
219 disability awards. The standards should be established as
220 an effective means to make prompt, appropriate decisions
221 relating to medical care and methods to assist employees
222 to return to work as quickly as possible;

223 (14) Appoint, if necessary, a temporary executive
224 director;

225 (15) Employ sufficient professional and clerical staff to
226 carry out the duties of the board. Employees of the board
227 shall serve at the will and pleasure of the board. The
228 board's employees are exempt from the salary schedule or
229 pay plan adopted by the division of personnel;

230 (16) Study the feasibility of, provide a plan for and
231 provide a proposal for a request for proposals from the
232 private sector for privatizing the workers' compensation
233 system of this state, including, but not limited to, a plan
234 for privatizing the administration of the workers' compen-
235 sation system of this state and a plan for allowing employ-
236 ers to obtain private insurance to insure their obligations
237 under the workers' compensation system of this state;
238 study the effect, if any, of attorneys fees on the cost of
239 administering the workers' compensation system; study
240 the extent to which fraud or abuse on the part of employ-
241 ees, providers and others have an effect on the cost of
242 administering the workers' compensation system; study
243 the extent, if any, that the rates and amounts of disability
244 awards exceed the rates and amounts of such awards in
245 other states; study the comparative desirability of alterna-
246 tive permanent disability administration in those other
247 states, and alternative deficit management strategies,
248 including nontraditional funding; study the feasibility of

249 authorizing a plan of multiple rate classifications by
250 individual employers for employers who have different or
251 seasonally diverse job classifications and duties: *Provided*,
252 That no such plan may be implemented until adopted by
253 the Legislature; and, in consultation with the director of
254 the division of personnel, study the feasibility of establish-
255 ing a work incentive program to place unemployed
256 qualified recipients of workers' compensation benefits in
257 state or local government employment. On or before the
258 first day of January, two thousand six, the commission
259 shall report the findings and conclusions of each study, the
260 plans and proposals, and any recommendations the
261 commission may have as a result of the study to the joint
262 committee on government and finance; and

263 (17) Complete all duties set forth in article two-c of this
264 chapter.

265 (k) The board of managers shall continue to exist
266 pursuant to this article until the commission is terminated
267 pursuant to the provisions of this chapter.

**§23-1-1b. Executive director; qualifications; oath; seal; re-
moval; powers and duties.**

1 (a) The executive director shall be hired by the board of
2 managers for a term not to exceed five years and may be
3 retained based on overall performance for additional
4 terms: *Provided*, That the executive director of the division
5 of workers' compensation on the date of the enactment of
6 this section in the year two thousand three shall serve as
7 the initial executive director of the commission and shall
8 receive the same salary and benefits as received as the
9 executive director of the division of workers' compensa-
10 tion through and until the board of managers establishes
11 his or her salary and benefits as the executive director of
12 the commission. The position of executive director shall
13 be full-time employment. Except for the initial executive
14 director, candidates for the position of executive director
15 shall have a minimum of a bachelor of arts or science

16 degree from an accredited four-year college or university
17 in one or more of the following disciplines: Finance;
18 economics; insurance administration; law; public adminis-
19 tration; accounting; or business administration. Candi-
20 dates for the position of executive director will be consid-
21 ered based on their demonstrated education, knowledge
22 and a minimum of ten years' experience in the areas of
23 workers' compensation, insurance company management,
24 administrative and management experience with an
25 organization comparable in size to the workers' compensa-
26 tion commission or any relevant experience which demon-
27 strates an ability to effectively accomplish the purposes of
28 this chapter.

29 (b) The executive director shall not be a candidate for or
30 hold any other public office or trust, nor shall he or she be
31 a member of a political committee. If he or she becomes a
32 candidate for a public office or becomes a member of a
33 political committee, his or her office as executive director
34 shall be immediately vacated.

35 (c) The executive director, before entering upon the
36 duties of his or her office, shall take and subscribe to the
37 oath prescribed by section five, article IV of the state
38 constitution. The oath shall be filed with the secretary of
39 state.

40 (d) The executive director shall have an official seal for
41 the authentication of orders and proceedings, upon which
42 seal shall be engraved the words "West Virginia Workers'
43 Compensation Commission" and any other design pre-
44 scribed by the board of managers. The courts in this state
45 shall take judicial notice of the seal of the commission and
46 in all cases copies of orders, proceedings or records in the
47 office of the West Virginia workers' compensation com-
48 mission are equal to the original in evidence.

49 (e) The executive director shall not be a member of the
50 board of managers.

51 (f) The executive director shall serve until the expiration
52 of his or her term, resignation or until removed by a two-
53 thirds vote of the full board of managers. The board of
54 managers and the executive director may, by agreement,
55 terminate the term of employment at any time.

56 (g) The executive director shall have overall management
57 responsibility and administrative control and supervision
58 within the workers' compensation commission and has the
59 power and duty to:

60 (1) Establish, with the approval of the board of manag-
61 ers, the overall administrative policy of the commission for
62 the purposes of this chapter;

63 (2) Employ, direct and supervise all employees required
64 in the connection with the performance of the duties
65 assigned to the commission by this chapter and fix the
66 compensation of the employees in accordance with the
67 provisions of article six, chapter twenty-nine of this code:
68 *Provided*, That the executive director shall identify which
69 members of the staff of the workers' compensation com-
70 mission shall be exempted from the salary schedules or
71 pay plan adopted by the state personnel board and further
72 identify such staff members by job classification or
73 designation, together with the salary or salary ranges for
74 each such job classification or designation and shall file
75 this information with the director of the division of
76 personnel no later than the thirty-first day of December,
77 two thousand three, and thereafter as changes are made or
78 at least annually: *Provided, however*, That, effective the
79 first day of July, two thousand six, if the commission has
80 not been terminated or otherwise discontinued, all em-
81 ployees of the commission shall be exempt and otherwise
82 not under the jurisdiction of the provisions of the statutes,
83 rules and regulations of the classified service set forth in
84 article six, chapter twenty-nine of this code and article
85 six-a of said chapter and are afforded no protections,
86 rights or access to procedures set forth in said provision.
87 All commission employees shall be employees at will

88 unless his or her employment status is altered by an
89 express, written employment contract executed on behalf
90 of the commission and the employee. The commission and
91 its employees shall be exempt and otherwise not under the
92 jurisdiction of the state personnel board, the department
93 of personnel, or any other successor agency, and their
94 statutes, rules and regulations;

95 (3) Reorganize the work of the commission, its divisions,
96 sections and offices to the extent necessary to achieve the
97 most efficient performance of its functions. All persons
98 employed by the workers' compensation division in
99 positions that were formerly supervised and directed by
100 the commissioner of the bureau of employment programs
101 under chapter twenty-one-a of this code are hereby
102 assigned and transferred in their respective classifications
103 to the workers' compensation commission effective the
104 first day of October, two thousand three. Further, the
105 executive director may select persons that are employed by
106 the bureau of employment programs on the effective date
107 of the enactment of this section in the year two thousand
108 three to be assigned and transferred to the workers'
109 compensation commission in their respective classifica-
110 tions, such assignment and transfer to take effect no later
111 than the thirty-first day of December, two thousand three.
112 Employees in the classified service who have gained
113 permanent status as of the effective date of this article will
114 not be subject to further qualifying examination in their
115 respective classifications by reason of any transfer re-
116 quired by the provisions of this subdivision. Due to the
117 emergency currently existing at the commission and the
118 urgent need to develop fast, efficient claims processing,
119 management and administration, the executive director is
120 hereby granted authority to reorganize internal functions
121 and operations and to delegate, assign, transfer, combine,
122 establish, eliminate and consolidate responsibilities and
123 duties to and among the positions transferred under the
124 authority of this subdivision. The division of personnel
125 shall cooperate fully by assisting in all personnel activities

126 necessary to expedite all changes for the commission. The
127 executive director is hereby granted authority to reorga-
128 nize internal functions and operations and to delegate,
129 assign, transfer, combine, establish, eliminate and consoli-
130 date responsibilities and duties to and among the positions
131 transferred under the authority of this subdivision. The
132 division of personnel shall cooperate fully by assisting in
133 all personnel activities necessary to expedite all changes
134 for the commission and shall otherwise continue to provide
135 all necessary administrative support to the commission in
136 connection with the commission's personnel needs until
137 the company established in article two-c of this chapter
138 becomes operational. Nothing contained in this subdivi-
139 sion shall be construed to either abridge the rights of
140 employees within the classified service of the state to the
141 procedures and protections set forth in article six, chapter
142 twenty-nine of this code or to preclude the reclassification
143 or reallocation of positions in accordance with procedures
144 set forth in said article;

145 (4) Exempt no more than twenty-five of any of the newly
146 created positions from the classified service of the state,
147 the employees of which positions shall serve at the will
148 and pleasure of the executive director. The executive
149 director shall report all exemptions made under this
150 subdivision to the director of the division of personnel no
151 later than the first day of January, two thousand four, and
152 thereafter as the executive director determines to be
153 necessary;

154 (5) With the advice and approval of the board of manag-
155 ers, propose operating guidelines and policies to standard-
156 ize administration, expedite commission business and
157 promote the efficiency of the services provided by the
158 commission;

159 (6) Prepare and submit to the board of managers infor-
160 mation the board requires for classifications of occupa-
161 tions or industries; the basis for premium rates, taxes,
162 surcharges and assessment for administrative charges, for

163 assessments related to loss experience, for assessments of
164 prospective risk exposure, for assessments of deficit
165 management and deficit reduction costs incurred, for other
166 deficit management and deficit reduction assessments, for
167 rules and systems of rating, rate revisions and merit rating
168 for employers covered by this chapter; and information
169 regarding the extent, degree and amount of subsidization
170 between the classifications. The executive director shall
171 obtain, prepare and submit any other information the
172 board of managers requires for the prompt and efficient
173 discharge of its duties;

174 (7) Keep accurate and complete accounts and records
175 necessary to the collection, administration and distribu-
176 tion of the workers' compensation funds;

177 (8) Sign and execute in the name of the state, by "The
178 Workers' Compensation Commission", any contract or
179 agreement;

180 (9) Make recommendations and an annual report to the
181 governor concerning the condition, operation and func-
182 tioning of the commission;

183 (10) Invoke any legal or special remedy for the enforce-
184 ment of orders or the provisions of this chapter;

185 (11) Prepare and submit for approval to the board of
186 managers a budget for each fiscal year, including estimates
187 of the costs and necessary expenditures of the commission
188 in the discharge of all duties imposed by this chapter as
189 well as the costs of furnishing office space to the officers
190 and employees of the commission;

191 (12) Ensure that all employees of the commission follow
192 the orders, operating guidelines and policies of the com-
193 mission as they relate to the commission's overall
194 policymaking, management and adjudicatory duties under
195 this chapter;

196 (13) Delegate all powers and duties vested in the execu-
197 tive director to his or her appointees and employees; but
198 the executive director is responsible for their acts;

199 (14) Provide at commission expense a program of
200 continuing professional, technical and specialized instruc-
201 tion for the personnel of the commission. The executive
202 director shall consult with and report at least annually to
203 the legislative oversight commission on workforce invest-
204 ment for economic development to obtain the most appro-
205 priate training using all available resources;

206 (15) (A) Contract or employ counsel to perform all legal
207 services for the commission including, but not limited to,
208 representing the executive director, board of managers and
209 commission in any administrative proceeding and in any
210 state or federal court. Additionally, the commission may,
211 but shall not be required to, call upon the attorney general
212 for legal assistance and representation as provided by law.
213 The attorney general shall not approve or exercise author-
214 ity over in-house counsel or contract counsel hired pursu-
215 ant to this section;

216 (B) In addition to the authority granted by this section to
217 the executive director and notwithstanding any provision
218 to the contrary elsewhere in this code, use any attorney
219 regularly employed by the commission or the office of the
220 attorney general to represent the commission, the execu-
221 tive director or the board of managers in any matter
222 arising from the performance of its duties or the execution
223 of its powers under this chapter. In addition, the executive
224 director, with the approval of the board of managers, may
225 retain counsel for any purpose in the administration of this
226 chapter relating to the collection of any amounts due from
227 employers to the commission: *Provided*, That the alloca-
228 tion of resources for the purpose of any collections shall be
229 pursuant to the plan developed by the board of managers.
230 The board of managers shall solicit proposals from counsel
231 who are interested in representing the commission under
232 the terms of this subdivision. Thereafter, the board of
233 managers shall select any attorneys it determines neces-
234 sary to pursue the collection objectives of this subdivision:

235 (i) Payment to retained counsel may either be hourly or
236 by other fixed fee, or as determined by the court or
237 administrative law judge as provided in this section. A
238 contingency fee payable from the amount recovered by
239 judgment or settlement for the commission is only permit-
240 ted, to the extent not prohibited by federal law, when the
241 assets of a defendant or respondent are depleted so that a
242 full recovery plus attorneys' fees is not possible;

243 (ii) In the event that any collections action, other than a
244 collections action against a claimant, initiated either by
245 retained counsel or other counsel on behalf of the commis-
246 sion results in a judgment or settlement in favor of the
247 commission, the court or, if there was no judicial compo-
248 nent to the action, the administrative law judge, shall
249 determine the amount of attorneys' fees that shall be paid
250 by the defendants or respondents to the retained or other
251 counsel representing the commission. If the court is to
252 determine the amount of attorneys' fees, it shall include in
253 its determination the amount of fee that should be paid for
254 the representation of the commission in pursuing the
255 administrative component, if any, of the action. The
256 amount so paid shall be fixed by the court or the adminis-
257 trative law judge in an amount no less than twenty percent
258 of its recovery. Any additional amount of attorneys' fees
259 shall be determined by use of the following factors:

260 (I) The counsel's normal hourly rate or, if the counsel is
261 an employee of the commission or is an employee of the
262 office of the attorney general, an hourly rate the court or
263 the administrative law judge determines to be customary
264 based upon the attorney's experience and skill level;

265 (II) The number of hours actually expended on the
266 action;

267 (III) The complexity of the issues involved in the action;

268 (IV) The degree of risk involved in the case with regard
269 to the probability of success or failure;

270 (V) The overhead costs incurred by counsel with regard
271 to the use of paralegals and other office staff, experts and
272 investigators; and

273 (VI) The public purpose served or public objective
274 achieved by the attorney in obtaining the judgment or
275 settlement on behalf of the commission;

276 (iii) Notwithstanding the provisions of paragraph (B) of
277 this subdivision, if the commission and the defendants or
278 respondents to any administrative or judicial action settle
279 the action, the parties may negotiate a separate settlement
280 of attorneys' fees to be paid by the defendants or respon-
281 dents above and beyond the amount recovered by the
282 commission. In the event that a settlement of attorneys'
283 fees is made, it must be submitted to the court or adminis-
284 trative law judge for approval;

285 (iv) Any attorney regularly employed by the commission
286 or by the office of the attorney general may not receive any
287 remuneration for his or her services other than the attor-
288 ney's regular salary. Any attorneys' fees awarded for an
289 employed attorney are payable to the commission;

290 (16) Propose rules for promulgation by the board of
291 managers under which agencies of this state shall revoke
292 or refuse to grant, issue or renew any contract, license,
293 permit, certificate or other authority to conduct a trade,
294 profession or business to or with any employing unit
295 whose account is in default with the commission with
296 regard to the administration of this chapter. The term
297 "agency" includes any unit of state government such as
298 officers, agencies, divisions, departments, boards, commis-
299 sions, authorities or public corporations. An employing
300 unit is not in default if it has entered into a repayment
301 agreement with the commission and remains in compliance
302 with its obligations under the repayment agreements;

303 (A) The rules shall provide that, before granting, issuing
304 or renewing any contract, license, permit, certificate or

305 other authority to conduct a trade, profession or business
306 to or with any employing unit, the designated agencies
307 shall review a list or lists provided by the commission of
308 employers that are in default. If the employing unit's
309 name is not on the list, the agency, unless it has actual
310 knowledge that the employing unit is in default with the
311 commission, may grant, issue or renew the contract,
312 license, permit, certificate or other authority to conduct a
313 trade, profession or business. The list may be provided to
314 the agency in the form of a computerized database or
315 databases that the agency can access. Any objections to
316 the refusal to issue or renew shall be reviewed under the
317 appropriate provisions of this chapter. The prohibition
318 against granting, issuing or renewing any contract, license,
319 permit, certificate or other authority under this subdivi-
320 sion shall remain in full force and effect as promulgated
321 under section six, article two, chapter twenty-one-a of this
322 code until the rules required by this subsection are pro-
323 mulgated and in effect;

324 (B) The rules shall also provide a procedure allowing any
325 agency or interested person, after being covered under the
326 rules for at least one year, to petition the commission to be
327 exempt from the provisions of the rules;

328 (17) Deposit to the credit of the appropriate special
329 revenue account or fund, notwithstanding any other
330 provision of this code and to the extent allowed by federal
331 law, all amounts of delinquent payments or overpayments,
332 interest and penalties thereon and attorneys' fees and costs
333 collected under the provisions of this chapter. The
334 amounts collected shall not be treated by the auditor or
335 treasurer as part of the general revenue of the state;

336 (18) Recommend for approval of the board of managers
337 rules for the administration of claims management by self-
338 insured employers and third-party administrators includ-
339 ing regulation and sanctions for the rejection of claims and
340 for maintaining claim records and ensuring access to all

341 claim records by interested claimants, claimant represen-
342 tatives, the commission and the office of judges;

343 (19) Recommend for approval of the board of managers,
344 rules to eliminate the ability of an employer to avoid an
345 experience modification factor by virtue of a reorganiza-
346 tion of a business;

347 (20) Submit for approval of the board of managers rules
348 setting forth procedures for auditing and investigating
349 employers, including employer premium audits and
350 including auditing and investigating programs of self-
351 insured employers and third-party administrators, em-
352 ployees, health care providers and medical and vocational
353 rehabilitation service providers;

354 (21) Regularly audit and monitor programs established
355 by self-insured or third-party administrators under this
356 chapter to ensure compliance with the commission's rules
357 and the law;

358 (22) Facilitate the transfer of the fraud investigation and
359 prosecution unit, along with the assets necessary to
360 support the functions being performed, to the insurance
361 commissioner. This transfer shall be to be completed by
362 the first day of July, two thousand five. This unit has the
363 responsibility and authority for investigating and control-
364 ling fraud of the workers' compensation system of the state
365 of West Virginia. The fraud unit shall be under the
366 supervision of an inspector general, who shall be ap-
367 pointed by the insurance commissioner. Nothing in this
368 section shall preclude the commission or, when applicable,
369 the company created in article two-c of this chapter and
370 other private carriers, from independently investigating
371 and controlling abuse and exercising the powers granted
372 to the commission to address and eliminate abuse under
373 this chapter. The executive director may select persons
374 that are assigned to the fraud and abuse unit on the
375 effective date of the enactment of this section to be
376 assigned and remain employees of the workers' compensa-

377 tion commission. The commission shall determine its
378 fiscal year two thousand six budget for the fraud investi-
379 gation and prosecution unit and shall make advanced
380 quarterly payments to the insurance commissioner during
381 fiscal year two thousand six for the actual operational
382 expenses incurred as a direct result of this transfer:
383 *Provided*, That the payments and expenses shall be
384 reconciled prior to the final fiscal year transfer and any
385 unexpended amount shall be deducted from the final
386 quarter's payment. This reimbursement methodology shall
387 repeat for fiscal year two thousand seven. Any amounts
388 transferred under this section to the insurance commis-
389 sioner shall be appropriated by the Legislature. The
390 commission's inspector general shall serve as the initial
391 inspector general for the insurance commissioner;

392 (A) The inspector general shall, with the consent and
393 advice of the executive director, employ all personnel as
394 necessary for the institution, development and finalization
395 of procedures and investigations which serve to ensure
396 that only necessary and proper workers' compensation
397 benefits and expenses are paid to or on behalf of injured
398 employees and to insure employers subscribe to and pay
399 the proper premium to the West Virginia workers' com-
400 pensation commission. Qualification, compensation and
401 personnel practice relating to the employees of the fraud
402 and abuse unit, including that of the position of inspector
403 general, shall be governed by the provisions of the statutes
404 and rules of the classified service pursuant to article six,
405 chapter twenty-nine of this code. The inspector general
406 shall supervise all personnel, which collectively shall be
407 referred to in this chapter as the fraud and abuse unit;

408 (B) The fraud and abuse unit shall have the following
409 powers and duties:

410 (i) The fraud and abuse unit shall propose for promulga-
411 tion by the board of managers rules for determining the
412 existence of fraud and abuse as it relates to the workers'
413 compensation system in West Virginia;

414 (ii) The fraud and abuse unit will be responsible for the
415 initiation, development, review and proposal for promul-
416 gation by the board of managers of rules regarding the
417 existence of fraud and abuse as it relates to the workers'
418 compensation system in West Virginia;

419 (iii) The fraud and abuse unit will take action to identify
420 and prevent and discourage any and all fraud and abuse;

421 (iv) The fraud and abuse unit, in cases of criminal fraud,
422 has the authority to review and prosecute those cases for
423 violations of sections twenty-four-e, twenty-four-f,
424 twenty-four-g and twenty-four-h, article three, chapter
425 sixty-one of this code, as well as any other criminal
426 statutes that may be applicable. In addition the fraud and
427 abuse unit not only has the authority to prosecute and
428 refer cases involving criminal fraud to appropriate state
429 authorities for prosecution, but it also has the authority,
430 and is encouraged, to cooperate with the appropriate
431 federal authorities for review and possible prosecution, by
432 either state or federal agencies, of cases involving criminal
433 fraud concerning the workers' compensation system in
434 West Virginia;

435 (v) The fraud and abuse unit, in cases which do not meet
436 the definition of criminal fraud, but would meet a reason-
437 able person's definition of an abuse of the workers'
438 compensation system, shall take the appropriate action to
439 discourage and prevent such abuse. Furthermore, the
440 fraud and abuse unit shall assist the commission to
441 develop evidence of fraud or abuse which can be used
442 pursuant to the provisions of this chapter to suspend, and
443 where appropriate, terminate, a claimant's benefits. In
444 addition, evidence developed pursuant to these provisions
445 can be used in hearings before the office of judges on
446 protests to commission decisions terminating, or not
447 terminating, temporary total disability benefits; and

448 (vi) The fraud and abuse unit, is expressly authorized to
449 initiate investigations and participate in the development

450 of, and if necessary, the prosecution of any health care
451 provider, including a provider of rehabilitation services,
452 alleged to have violated the provisions of section three-c,
453 article four of this chapter;

454 (C) Specific personnel, designated by the inspector
455 general, shall be permitted to operate vehicles owned or
456 leased for the state displaying Class A registration plates;

457 (D) Notwithstanding any provision of this code to the
458 contrary, specific personnel designated by the inspector
459 general may carry handguns in the course of their official
460 duties after meeting specialized qualifications established
461 by the governor's committee on crime, delinquency and
462 correction, which qualifications shall include the success-
463 ful completion of handgun training provided to law-
464 enforcement officers by the West Virginia state police:
465 *Provided*, That nothing in this subsection shall be con-
466 strued to include the personnel so designated by the
467 inspector general to carry handguns within the meaning of
468 the term law-enforcement official as defined in section
469 one, article twenty-nine, chapter thirty of this code;

470 (E) The fraud and abuse unit is not subject to any
471 requirement of article nine-a, chapter six of this code and
472 the investigations conducted by the fraud and abuse unit
473 and the materials placed in the files of the unit as a result
474 of any such investigation are exempt from public disclo-
475 sure under the provisions of chapter twenty-nine-b of this
476 code;

477 (F) In the event that a final judicial decision adjudges
478 that the statewide prosecutorial powers vested by this
479 subdivision in the fraud and abuse unit may only be
480 exercised by a public official other than an employee of
481 the fraud and abuse unit, then to that extent the provisions
482 of this subdivision vesting statewide prosecutorial power
483 shall thenceforth be of no force and effect, the remaining
484 provisions of this subdivision shall continue in full force
485 and effect and prosecutions hereunder may only be

486 exercised by the prosecuting attorneys of this state and
487 their assistants or special assistant prosecuting attorneys
488 appointed as provided by law;

489 (23) Enter into interagency agreements to assist in
490 exchanging information and fulfilling the default provi-
491 sions of this chapter;

492 (24) Notwithstanding any provision of this code to the
493 contrary, the executive director, under emergency authori-
494 zation:

495 (A) May expend up to fifty thousand dollars for pur-
496 chases of and may contract for goods and services without
497 securing competitive bids. This emergency spending
498 authority expires on the first day of July, two thousand
499 five; and

500 (B) May expend such sums as the executive director
501 determines are necessary for professional services, con-
502 tracts for the purchase of an automated claims administra-
503 tion system and associated computer hardware and
504 software in the administration of claims for benefits made
505 under provisions of this chapter and contracts for techni-
506 cal services and related services necessary to develop,
507 implement and maintain the system and associated
508 computer hardware and software. The provisions of
509 article three, chapter five-a of this code relating to the
510 purchasing division of the department administration shall
511 not apply to these contracts. The director shall award the
512 contract or contracts on a competitive basis. This emer-
513 gency spending authority expires on the thirty-first day of
514 December, two thousand six;

515 (25) Establish an employer violator system to identify
516 individuals and employers who are in default or are
517 delinquent on any premium, assessment, surcharge, tax or
518 penalty owed to the commission. The employer violator
519 system shall prohibit violators who own, control or have a
520 ten percent or more ownership interest, or other ownership

521 interest as may be defined by the commission, in any
522 company from obtaining or maintaining any license,
523 certificate or permit issued by the state until the violator
524 has paid all moneys owed to the commission or has entered
525 into and remains in compliance with a repayment agree-
526 ment;

527 (26) Propose the designation of health care providers to
528 make decisions for the commission regarding appropriate-
529 ness of medical services;

530 (27) Study the correlation between premium tax merit
531 rating for employers and the safety performance of
532 employers. This study shall be completed prior to the first
533 day of July, two thousand four, and the results thereof
534 provided to the board of managers;

535 (28) Upon termination of the commission, accomplish the
536 transfer to the insurance commissioner established in
537 article two-c of this chapter, the insurance commissioner,
538 and any other applicable state agency or department, of
539 the functions necessary for the regulation of the workers'
540 compensation insurance industry, including, but not
541 limited to, the following commission functions: rate
542 making, self-insurance, office of judges and board of
543 review. The executive director may select persons that are
544 assigned to these functions on the effective date of the
545 enactment of this section to be assigned and become
546 employees of the company as established in article two-c
547 of this chapter. The executive director may, in consulta-
548 tion with the insurance commissioner, select persons that
549 are assigned to the insurance commissioner. The commis-
550 sion shall determine its fiscal year two thousand six
551 budget for each of these functions, reduce the budget
552 amount attributable to self-insured employers for these
553 functions and shall make advanced quarterly payments to
554 the insurance commissioner during fiscal year two thou-
555 sand six for the actual operational expenses incurred as a
556 direct result of this transfer. The amount shall include the
557 funds necessary to operate the industrial council and the

558 insurance commissioner shall be administratively respon-
559 sible for the industrial council's budget: *Provided*, That
560 the payments and expenses shall be reconciled prior to the
561 final fiscal year transfer and any unexpended amount shall
562 be deducted from the final quarter's payment. This
563 reimbursement methodology shall repeat for fiscal year
564 two thousand and seven. Any amounts transferred under
565 this section to the insurance commissioner shall be appro-
566 priated by the Legislature. For the final calendar quarter
567 of two thousand five and the first and second calendar
568 quarters of the year two thousand six, all self-insured
569 employers shall remit to the insurance commissioner on a
570 quarterly basis the administrative component of their
571 fiscal year two thousand six rate. For the fiscal year
572 beginning the first day of July, two thousand six, self-
573 insured employers shall remit an administrative charge to
574 the insurance commissioner in an amount determined by
575 the commissioner. All self-insured employer advance
576 deposits shall transfer from the commission to the insur-
577 ance commissioner upon termination of the commission;
578 and

579 (29) Perform all duties set forth in article two-c of this
580 chapter.

§23-1-1c. Payment withholding; interception; penalty.

1 (a) All state, county, district and municipal officers and
2 agents making contracts on behalf of the state of West
3 Virginia or any political subdivision thereof shall withhold
4 payment in the final settlement of contracts until the
5 receipt of a certificate from the commission or the com-
6 pany created in article two-c of this chapter to the effect
7 that all payments, interest and penalties thereon accrued
8 against the contractor under this chapter as of the termi-
9 nation of the commission have been paid or that provisions
10 satisfactory to the commission or company created in
11 article two-c of this chapter have been made for payment.
12 Any official violating this subsection is guilty of a misde-
13 meanor and, on conviction thereof, shall be fined not more

14 than one thousand dollars or confined in the county or
15 regional jail for not more than one year, or both fined and
16 confined.

17 (b) Any agency of the state, for the limited purpose of
18 intercepting, pursuant to section five-a, article two of this
19 chapter, any payment by or through the state to an
20 employer who is in default in payment of contributions,
21 premiums, deposits, interest or penalties under the provi-
22 sions of this chapter, shall assist the commission or
23 company created in article two-c of this chapter in collect-
24 ing the payment that is due under subsection (a) of this
25 section. For this purpose, disclosure of joint delinquency
26 and default lists of employers with respect to unemploy-
27 ment compensation as provided in section six-c, article
28 one, chapter twenty-one-a of this code and workers'
29 compensation contributions, premiums, interest, deposits
30 or penalties is authorized. The commission and the bureau
31 of employment programs may enter into an interagency
32 agreement to effect the provisions of this section. The lists
33 may be in the form of a computerized database to be
34 accessed by the auditor, the department of tax and reve-
35 nue, the department of administration, the division of
36 highways or other appropriate state agency or officer.

**§23-1-1e. Transfer of assets and contracts; ability to acquire,
own, lease and otherwise manage property.**

1 (a) With the establishment of the workers' compensation
2 commission, all assets and contracts, along with rights and
3 obligations thereunder, obtained or signed on behalf of the
4 workers' compensation division of the bureau of employ-
5 ment programs in furtherance of the purposes of this
6 chapter, are hereby transferred and assigned to the work-
7 ers' compensation commission.

8 (b) From the termination of the commission through the
9 thirtieth day of June, two thousand eight, the company
10 may continue to contract and exchange data and informa-
11 tion with the office of information, services and communi-

12 cation, the bureau of employment programs, the division
13 of motor vehicles, various child support enforcement
14 agencies and other similar state agencies and entities in a
15 manner similar to the commission to accomplish the intent
16 of this chapter.

§23-1-1g. Legislative intent to create a quasi-public entity.

1 In recognition of the impact a state's workers' compen-
2 sation premium levels may have on the state's ability to
3 conduct economic development and the resulting need to
4 operate the state's workers' compensation system in such
5 a manner that will enable the lowest premiums to be
6 charged employers while at the same time ensuring
7 adequate benefit levels are provided to injured workers, it
8 is the intent of the Legislature that the workers' compen-
9 sation commission remain a commission of the state as
10 provided in article two, chapter five-f of this code until the
11 company created in article two-c of this chapter is created
12 and operational and the New Fund created in article two-c
13 of this chapter has been funded. Until the termination of
14 the commission and in order for the commission to be able
15 to capture the efficiencies associated with private sector
16 operations, the workers' compensation commission is
17 exempt from the provisions of the following effective upon
18 the date upon which this enactment is made effective by
19 the Legislature:

20 (a) Article three, chapter five-a, related to the depart-
21 ment of administration purchasing division; and

22 (b) Section eleven, article three, chapter twelve, relating
23 to appropriations, expenditures and deductions.

§23-1-11. Depositions; investigations.

1 (a) In an investigation into any matter arising under
2 articles one through five, inclusive, of this chapter, the
3 commission may cause depositions of witnesses residing
4 within or without the state to be taken in the manner
5 prescribed by law for like depositions in the circuit court,

6 but the depositions shall be upon reasonable notice to
7 claimant and employer or other affected persons or their
8 respective attorneys. The commission shall designate the
9 person to represent it for the taking of the deposition.

10 (b) The commission also has discretion to accept and
11 consider depositions taken within or without the state by
12 either the claimant or employer or other affected person,
13 provided due and reasonable notice of the taking of the
14 depositions was given to the other parties or their attor-
15 neys, if any: *Provided*, That the commission, upon due
16 notice to the parties, has authority to refuse or permit the
17 taking of depositions or to reject the depositions after they
18 are taken, if they were taken at a place or under circum-
19 stances which imposed an undue burden or hardship upon
20 the other parties. The commission's discretion to accept,
21 refuse to approve or reject the depositions is binding in the
22 absence of abuse of the discretion.

23 (c) The powers and duties set forth in the section shall be
24 transferred from the workers' compensation commission
25 to the insurance commissioner upon termination of the
26 commission.

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

1 (a) The workers' compensation commission shall adopt
2 reasonable and proper rules of procedure, regulate and
3 provide for the kind and character of notices, and the
4 service of the notices, in cases of accident and injury to
5 employees, the nature and extent of the proofs and evi-
6 dence, the method of taking and furnishing of evidence to
7 establish the rights to benefits or compensation from the
8 fund hereinafter provided for, or directly from employers
9 as hereinafter provided, as the case may require, and the
10 method of making investigations, physical examinations

11 and inspections and prescribe the time within which
12 adjudications and awards shall be made.

13 (b) At hearings and other proceedings before the com-
14 mission or before the duly authorized representative of the
15 commission, an employer who is a natural person may
16 appear, and a claimant may appear, only as follows:

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

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

25 (3) By a representative from a labor organization who
26 has been recognized by the commission as being qualified
27 to represent a claimant or who is an individual otherwise
28 found to be qualified by the commission to act as a
29 representative. The representative shall participate in the
30 presentation of facts, figures and factual conclusions as
31 distinguished from the presentation of legal conclusions in
32 respect to the facts and figures; or

33 (4) Pro se.

34 (c) At hearings and other proceedings before the commis-
35 sion or before the duly authorized representative of the
36 commission, an employer who is not a natural person may
37 appear only as follows:

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

40 (2) By a nonresident attorney duly licensed and admitted
41 to practice before a court of record of general jurisdiction
42 in another state or country or in the District of Columbia
43 who has complied with the provisions of rule 8.0 - admis-

44 sion pro hac vice, West Virginia supreme court rules for
45 admission to the practice of law, as amended;

46 (3) By a member of the board of directors of a corpora-
47 tion or by an officer of the corporation for purposes of
48 representing the interest of the corporation in the presen-
49 tation of facts, figures and factual conclusions as distin-
50 guished from the presentation of legal conclusions in
51 respect to the facts and figures; or

52 (4) By a representative from an employer service com-
53 pany who has been recognized by the commission as being
54 qualified to represent an employer or who is an individual
55 otherwise found to be qualified by the commission to act
56 as a representative. The representative shall participate in
57 the presentation of facts, figures and factual conclusions
58 as distinguished from the presentation of legal conclusions
59 in respect to the facts and figures.

60 (d) The commission or its representative may require an
61 individual appearing on behalf of a natural person or
62 corporation to produce satisfactory evidence that he or she
63 is properly qualified and authorized to appear pursuant to
64 this section.

65 (e) Subsections (b), (c) and (d) of this section shall not be
66 construed as being applicable to proceedings before the
67 office of judges pursuant to the provisions of article five of
68 this chapter.

69 (f) At the direction of a treating or evaluating psychia-
70 trist or clinical doctoral-level psychologist, a psychiatric
71 or psychological report concerning a claimant who is
72 receiving treatment or is being evaluated for psychiatric or
73 psychological problems may be withheld from the claim-
74 ant. In that event, a summary of the report shall be
75 compiled by the reporting psychiatrist or clinical doctoral-
76 level psychologist. The summary shall be provided to the
77 claimant upon his or her request. Any representative or
78 attorney of the claimant must agree to provide the claim-
79 ant with only the summary before the full report is pro-

80 vided to the representative or attorney for his or her use in
81 preparing the claimant's case. The report shall only be
82 withheld from the claimant in those instances where the
83 treating or evaluating psychiatrist or clinical doctoral-
84 level psychologist certifies that exposure to the contents of
85 the full report is likely to cause serious harm to the
86 claimant or is likely to cause the claimant to pose a serious
87 threat of harm to a third party.

88 (g) In any matter arising under articles one through five,
89 inclusive, of this chapter in which the commission is
90 required to give notice to a party, if a party is represented
91 by an attorney or other representative, then notice to the
92 attorney or other representative is sufficient notice to the
93 party represented.

94 (h) The powers and duties set forth in the section shall be
95 transferred from the workers' compensation commission
96 to the insurance commissioner upon termination of the
97 commission.

§23-1-14. Forms.

1 The commission shall prepare and furnish free of cost
2 forms (and provide in his or her rules for their distribution
3 so that they may be readily available) of applications for
4 benefits for compensation from the workers' compensation
5 fund, or directly from employers, as the case may be,
6 notices to employers, proofs of injury or death, of medical
7 attendance, of employment and wage earnings and any
8 other forms considered proper and advisable. It is the
9 duty of employers to constantly keep on hand a sufficient
10 supply of the forms. The powers and duties set forth in the
11 section shall be transferred from the workers' compensa-
12 tion commission to the insurance commissioner as of the
13 termination of the commission.

§23-1-15. Procedure before commission.

1 The commission, and the insurance commissioner
2 effective upon termination of the commission, are not

3 bound by the usual common-law or statutory rules of
4 evidence, but shall adopt formal rules of practice and
5 procedure as herein provided, and may make investiga-
6 tions in a manner that in his or her judgment is best
7 calculated to ascertain the substantial rights of the parties
8 and to carry out the provisions of this chapter.

**§23-1-17. Annual report by the insurance commissioner and
occupational pneumoconiosis board.**

1 Annually, on or about the fifteenth day of September in
2 each year, the insurance commissioner and the occupa-
3 tional pneumoconiosis board shall make a report as of the
4 thirtieth day of June addressed to the governor, which
5 shall include a statement of the causes of the injuries for
6 which the awards were made, an explanation of the
7 diagnostic techniques used by the occupational pneumoco-
8 niosis board and all examining physicians to determine the
9 presence of disease, the extent of impairment attributable
10 thereto, a description of the scientific support for the
11 diagnostic techniques and a summary of public and
12 private research relating to problems and prevention of
13 occupational diseases. The report shall include a detailed
14 statement of all disbursements, and the condition of the
15 fund, together with any specific recommendations for
16 improvements in the workers' compensation law and for
17 more efficient and responsive administration of the work-
18 ers' compensation law, which the executive director
19 considers appropriate. Copies of all annual reports shall
20 be filed with the secretary of state and shall be made
21 available to the Legislature and to the public at large.

§23-1-19. Civil remedies.

1 (a) Any person, firm, corporation or other entity which
2 willfully, by means of false statement or representation, or
3 by concealment of any material fact, or by other fraudu-
4 lent scheme, device or artifice on behalf of himself, itself
5 or others, obtains or attempts to obtain benefits, payments,
6 allowances or reduced premium costs or other charges,

7 including workers' compensation coverage under the
8 programs of the workers' compensation commission, the
9 company, a private carrier or self-insured employer, to
10 which he or it is not entitled, or in a greater amount than
11 that to which he or it is entitled, shall be liable to the
12 workers' compensation commission, the company, the
13 private carrier or self-insured employer, in an amount
14 equal to three times the amount of such benefits, payments
15 or allowances to which he or it is not entitled and shall be
16 liable for the payment of reasonable attorney fees and all
17 other fees and costs of litigation.

18 (b) No criminal action or indictment need be brought
19 against any person, firm, corporation or other entity as a
20 condition for establishing civil liability hereunder.

21 (c) A civil action under this section may be prosecuted
22 and maintained on behalf of the workers' compensation
23 commission, the insurance commissioner, the company, a
24 private carrier or self-insured employer by any attorney in
25 contract with or employed by the workers' compensation
26 commission, the insurance commissioner, the company, a
27 private carrier or self-insured employer to provide such
28 representation.

29 (d) Venue for a civil action under this section shall be
30 either in the county in which the defendant resides or in
31 Kanawha County as selected by the commission or insur-
32 ance commissioner. Upon creation of the company
33 pursuant to article two-c of this chapter, venue for a civil
34 action under this section for the company, private carriers
35 and self-insured employers shall be either in the county in
36 which the defendant resides or the county in which the
37 injured worker was employed, as selected by the company,
38 the private carrier or self-insured employer.

39 (e) The remedies and penalties provided in this section
40 are in addition to those remedies and penalties provided
41 elsewhere by law.

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

**§23-2-1. Employers subject to chapter; elections not to provide
certain coverages; notices; filing of business regis-
tration certificates.**

1 (a) The state of West Virginia and all governmental
2 agencies or departments created by it, including county
3 boards of education, political subdivisions of the state, any
4 volunteer fire department or company and other emer-
5 gency service organizations as defined by article five,
6 chapter fifteen of this code, and all persons, firms, associa-
7 tions and corporations regularly employing another person
8 or persons for the purpose of carrying on any form of
9 industry, service or business in this state, are employers
10 within the meaning of this chapter and are required to
11 subscribe to and pay premium taxes into the workers'
12 compensation fund for the protection of their employees
13 and are subject to all requirements of this chapter and all
14 rules prescribed by the workers' compensation commission
15 with reference to rate, classification and premium pay-
16 ment: *Provided*, That rates will be adjusted by the com-
17 mission to reflect the demand on the compensation fund by
18 the covered employer.

19 (b) The following employers are not required to subscribe
20 to the fund, but may elect to do so:

21 (1) Employers of employees in domestic services;

22 (2) Employers of five or fewer full-time employees in
23 agricultural service;

24 (3) Employers of employees while the employees are
25 employed without the state except in cases of temporary
26 employment without the state;

27 (4) Casual employers. An employer is a casual employer
28 when the number of his or her employees does not exceed
29 three and the period of employment is temporary, inter-

30 mittent and sporadic in nature and does not exceed ten
31 calendar days in any calendar quarter;

32 (5) Churches;

33 (6) Employers engaged in organized professional sports
34 activities, including employers of trainers and jockeys
35 engaged in thoroughbred horse racing; or

36 (7) Any volunteer rescue squad or volunteer police
37 auxiliary unit organized under the auspices of a county
38 commission, municipality or other government entity or
39 political subdivision; volunteer organizations created or
40 sponsored by government entities, political subdivisions;
41 or area or regional emergency medical services boards of
42 directors in furtherance of the purposes of the emergency
43 medical services act of article four-c, chapter sixteen of
44 this code: *Provided*, That if any of the employers described
45 in this subdivision have paid employees, to the extent of
46 those paid employees, the employer shall subscribe to and
47 pay premium taxes into the workers' compensation fund
48 based upon the gross wages of the paid employees but with
49 regard to the volunteers, the coverage remains optional.

50 (8) Any employer whose employees are eligible to receive
51 benefits under the federal Longshore and Harbor Workers'
52 Compensation Act, 33 U. S. C. §901, *et seq.*, but only for
53 those employees eligible for those benefits.

54 (c) Notwithstanding any other provision of this chapter
55 to the contrary, whenever there are churches in a circuit
56 which employ one individual clergyman and the payments
57 to the clergyman from the churches constitute his or her
58 full salary, such circuit or group of churches may elect to
59 be considered a single employer for the purpose of pre-
60 mium payment into the workers' compensation fund.

61 (d) Employers who are not required to subscribe to the
62 workers' compensation fund may voluntarily choose to
63 subscribe to and pay premiums into the fund for the
64 protection of their employees and in that case are subject

65 to all requirements of this chapter and all rules and
66 regulations prescribed by the commission with reference
67 to rates, classifications and premium payments and shall
68 afford to them the protection of this chapter, including
69 section six of this article, but the failure of the employers
70 to choose to subscribe to and to pay premiums into the
71 fund shall not impose any liability upon them other than
72 any liability that would exist notwithstanding the provi-
73 sions of this chapter.

74 (e) Any foreign corporation employer whose employment
75 in this state is to be for a definite or limited period which
76 could not be considered "regularly employing" within the
77 meaning of this section may choose to pay into the work-
78 ers' compensation fund the premiums provided for in this
79 section, and at the time of making application to the
80 workers' compensation commission, the employer shall
81 furnish a statement under oath showing the probable
82 length of time the employment will continue in this state,
83 the character of the work, an estimate of the monthly
84 payroll and any other information which may be required
85 by the commission. At the time of making application the
86 employer shall deposit with the commission to the credit
87 of the workers' compensation fund the amount required by
88 section five of this article. That amount shall be returned
89 to the employer if the employer's application is rejected by
90 the commission. Upon notice to the employer of the
91 acceptance of his or her application by the commission, he
92 or she is an employer within the meaning of this chapter
93 and subject to all of its provisions.

94 (f) Any foreign corporation employer choosing to comply
95 with the provisions of this chapter and to receive the
96 benefits under this chapter shall, at the time of making
97 application to the commission in addition to other require-
98 ments of this chapter, furnish the commission with a
99 certificate from the secretary of state, where the certificate
100 is necessary, showing that it has complied with all the
101 requirements necessary to enable it legally to do business

102 in this state and no application of a foreign corporation
103 employer shall be accepted by the commission until the
104 certificate is filed.

105 (g) The following employers may elect not to provide
106 coverage to certain of their employees under the provisions
107 of this chapter:

108 (1) Any political subdivision of the state including
109 county commissions and municipalities, boards of educa-
110 tion, or emergency services organizations organized under
111 the auspices of a county commission may elect not to
112 provide coverage to any elected official. The election not
113 to provide coverage does not apply to individuals in
114 appointed positions or to any other employees of the
115 political subdivision;

116 (2) If an employer is a partnership, sole proprietorship,
117 association or corporation, the employer may elect not to
118 include as an "employee" within this chapter, any member
119 of the partnership, the owner of the sole proprietorship or
120 any corporate officer or member of the board of directors
121 of the association or corporation. The officers of a corpo-
122 ration or an association shall consist of a president, a vice
123 president, a secretary and a treasurer, each of whom is
124 elected by the board of directors at the time and in the
125 manner prescribed by the bylaws. Other officers and
126 assistant officers that are considered necessary may be
127 elected or appointed by the board of directors or chosen in
128 any other manner prescribed by the bylaws and, if elected,
129 appointed or chosen, the employer may elect not to include
130 the officer or assistant officer as an "employee" within the
131 meaning of this chapter: *Provided*, That except for those
132 persons who are members of the board of directors or who
133 are the corporation's or association's president, vice
134 president, secretary and treasurer and who may be ex-
135 cluded by reason of their positions from the benefits of this
136 chapter even though their duties, responsibilities, activi-
137 ties or actions may have a dual capacity of work which is
138 ordinarily performed by an officer and also of work which

139 is ordinarily performed by a worker, an administrator or
140 an employee who is not an officer, no other officer or
141 assistant officer who is elected or appointed shall be
142 excluded by election from coverage or be denied the
143 benefits of this chapter merely because he or she is an
144 officer or assistant officer if, as a matter of fact:

145 (A) He or she is engaged in a dual capacity of having the
146 duties and responsibilities for work ordinarily performed
147 by an officer and also having duties and work ordinarily
148 performed by a worker, administrator or employee who is
149 not an officer;

150 (B) He or she is engaged ordinarily in performing the
151 duties of a worker, an administrator or an employee who
152 is not an officer and receives pay for performing the duties
153 in the capacity of an employee; or

154 (C) He or she is engaged in an employment palpably
155 separate and distinct from his or her official duties as an
156 officer of the association or corporation;

157 (3) If an employer is a limited liability company, the
158 employer may elect not to include as an "employee" within
159 this chapter a total of no more than four persons, each of
160 whom are acting in the capacity of manager, officer or
161 member of the company.

162 (h) In the event of election under subsection (g) of this
163 section, the employer shall serve upon the commission
164 written notice naming the positions not to be covered and
165 shall not include the "employee's" remuneration for
166 premium purposes in all future payroll reports, and the
167 partner, proprietor or corporate or executive officer is not
168 considered an employee within the meaning of this chapter
169 after the notice has been served. Notwithstanding the
170 provisions of subsection (g), section five of this article, if
171 an employer is delinquent or in default or has not sub-
172 scribed to the fund even though it is obligated to do so
173 under the provisions of this article, any partner, proprietor

174 or corporate or executive officer shall not be covered and
175 shall not receive the benefits of this chapter.

176 (i) "Regularly employing" or "regular employment"
177 means employment by an employer which is not a casual
178 employer under this section.

179 (j) Upon the termination of the commission, the criteria
180 governing which employer shall or may subscribe to the
181 workers' compensation commission shall also govern
182 which employers shall or may purchase workers' compen-
183 sation insurance under article two-c of this chapter.

**§23-2-1d. Primary contractor liability; definitions; applications
and exceptions; certificates of good standing;
reimbursement and indemnification; 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 in-
3 cludes any primary contractor who regularly subcontracts
4 with other employers for the performance of any work
5 arising from or as a result of the primary contractor's own
6 contract: *Provided*, That a subcontractor does not include
7 one providing goods rather than services. For purposes of
8 this subsection, extraction of natural resources is a
9 provision of services. In the event that a subcontracting
10 employer defaults on its obligations to make payments to
11 the commission, then the primary contractor is liable for
12 the payments. However, nothing contained in this section
13 shall extend or except to a primary contractor or subcon-
14 tractors the provisions of section six, six-a or eight of this
15 article. This section is applicable only with regard to
16 subcontractors with whom the primary contractor has a
17 contract for any work or services for a period longer than
18 thirty days: *Provided, however*, That this section is also
19 applicable to contracts for consecutive periods of work
20 that total more than thirty days. It is not applicable to the
21 primary contractor with regard to sub-subcontractors.
22 However, a subcontractor for the purposes of a contract

23 with the primary contractor can itself become a primary
24 contractor with regard to other employers with whom it
25 subcontracts. It is the intent of the Legislature that no
26 contractor, whether a primary contractor, subcontractor
27 or sub-subcontractor, escape or avoid liability for any
28 workers' compensation premium, assessment or tax. The
29 executive director shall propose for promulgation a rule to
30 effect this purpose on or before the thirty-first day of
31 December, two thousand three.

32 (b) A primary contractor may avoid initial liability
33 under subsection (a) of this section if it obtains from the
34 executive director, prior to the initial performance of any
35 work by the subcontractor's employees, a certificate that
36 the subcontractor is in good standing with the workers'
37 compensation fund.

38 (1) Failure to obtain the certificate of good standing
39 prior to the initial performance of any work by the sub-
40 contractor results in the primary contractor being equally
41 liable with the subcontractor for all delinquent and
42 defaulted premium taxes, premium deposits, interest and
43 other penalties arising during the life of the contract or
44 due to work performed in furtherance of the contract:
45 *Provided*, That the commission is entitled to collect only
46 once for the amount of premiums, premium deposits and
47 interest due to the default, but the commission may impose
48 other penalties on the primary contractor or on the
49 subcontractor, or both.

50 (2) In order to continue avoiding liability under this
51 section, the primary contractor shall request that the
52 commission inform the primary contractor of any subse-
53 quent default by the subcontractor. In the event that the
54 subcontractor does default, the commission shall notify the
55 primary contractor of the default by placing a notice in the
56 first-class United States mail, postage prepaid, and
57 addressed to the primary contractor at the address fur-
58 nished to the commission by the primary contractor. The
59 mailing is good and sufficient notice to the primary

60 contractor of the subcontractor's default. However, the
61 primary contractor is not liable under this section until the
62 first day of the calendar quarter following the calendar
63 quarter in which the notice is given and then the liability
64 is only for that following calendar quarter and thereafter
65 and only if the subcontract has not been terminated:
66 *Provided*, That the commission is entitled to collect only
67 once for the amount of premiums, premium deposits and
68 interest due to the default, but the commission may impose
69 other penalties on the primary contractor or on the
70 subcontractor, or both.

71 (c) In any situation where a subcontractor defaults with
72 regard to its payment obligations under this chapter or
73 fails to provide a certificate of good standing as provided
74 in this section, the default or failure is good and sufficient
75 cause for a primary contractor to hold the subcontractor
76 responsible and to seek reimbursement or indemnification
77 for any amounts paid on behalf of the subcontractor to
78 avoid or cure a workers' compensation default, plus
79 related costs, including reasonable attorneys' fees, and to
80 terminate its subcontract with the subcontractor notwith-
81 standing any provision to the contrary in the contract.

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

86 (e) The commission may take any action authorized by
87 section five-a of this article in furtherance of its efforts to
88 collect amounts due from the primary contractor under
89 this section.

90 (f) Effective upon termination of the commission, this
91 section shall be applicable only to unpaid premiums due
92 the commission or the old fund as provided in article two-c
93 of this chapter.

§23-2-2. Commission to be furnished information by employers, state tax commissioner and division of unemployment compensation; secrecy of information; examination of employers, etc.; violation a misdemeanor.

1 (a) Every employer shall furnish the executive director,
2 upon request, all information required by him or her to
3 carry out the purposes of this chapter. Every employer
4 shall have a continuous and ongoing duty to maintain
5 current information about its activities, risks and rates on
6 the books of the commission. The executive director, or
7 any person employed by the commission for that purpose,
8 may examine under oath any employer or officer, agent or
9 employee of any employer.

10 (b) Notwithstanding the provisions of any other statute
11 to the contrary, specifically, but not exclusively, sections
12 five and five-b, article ten, chapter eleven of this code and
13 section eleven, article ten, chapter twenty-one-a of this
14 code, the executive director of the workers' compensation
15 commission may receive the following information:

16 (1) Upon written request to the state tax commissioner:
17 The names, addresses, places of business and other identi-
18 fying information of all businesses receiving a business
19 franchise registration certificate and the dates thereof; and
20 the names and social security numbers or other tax
21 identification numbers of the businesses and of the busi-
22 nesses' workers and employees, if otherwise collected, and
23 the quarterly or other applicable reporting period and
24 annual gross wages or other compensation paid to the
25 workers and employees of businesses reported pursuant to
26 the requirement of withholding of tax on income.

27 (2) Upon written application to the division of unem-
28 ployment compensation: In addition to the information
29 that may be released to the workers' compensation com-
30 mission for the purposes of this chapter under the provi-
31 sions of chapter twenty-one-a of this code, the names,
32 addresses and other identifying information of all employ-

33 ing units filing reports and information pursuant to
34 section eleven, article ten, chapter twenty-one-a of this
35 code as well as information contained in those reports
36 regarding the number and names, addresses and social
37 security numbers of employees employed and the gross
38 quarterly or other applicable reporting period wages paid
39 by each employing unit to each identified employee.

40 (c) All information acquired by the workers' compensa-
41 tion commission pursuant to subsection (b) of this section
42 shall be used only for auditing premium payments, assist-
43 ing in a wage determination, assisting in the determination
44 of employment status and registering businesses under the
45 single point of registration program as set forth in article
46 twelve, chapter eleven of this code. The workers' compen-
47 sation commission, upon receiving the business franchise
48 registration certificate information made available
49 pursuant to subsection (b) of this section, shall contact all
50 businesses receiving a business franchise registration
51 certificate and provide all necessary forms to register the
52 business under the provisions of this article. Any officer
53 or employee of this state who uses the information ob-
54 tained under this section in any manner other than the one
55 stated in this section or elsewhere authorized in this code,
56 or who divulges or makes known in any manner any of the
57 information obtained under this section, is guilty of a
58 misdemeanor and, upon conviction thereof, shall be fined
59 not more than one thousand dollars or incarcerated in the
60 county or regional jail for not more than one year, or both
61 together with cost of prosecution.

62 (d) Reasonable costs of compilation and production of
63 any information made available pursuant to subsection (b)
64 of this section shall be charged to the workers' compensa-
65 tion commission.

66 (e) Information acquired by the commission pursuant to
67 subsection (b) of this section is not subject to disclosure
68 under the provisions of chapter twenty-nine-b of this code.

69 (f) The right to request, gather and maintain information
70 set forth in this section shall transfer to the insurance
71 commissioner and the industrial council upon termination
72 of the commission.

§23-2-3. Report forms and other forms for use of employers.

1 The commission, and effective upon termination of the
2 commission, the insurance commissioner, shall prepare
3 and furnish report forms for the use of employers subject
4 to this chapter. Every employer receiving from the
5 commission any form or forms with direction for comple-
6 tion and returning to the commission shall return the form,
7 within the period fixed by the commission, completed as
8 to answer fully and correctly all pertinent questions in the
9 form, and if unable to do so, shall give good and sufficient
10 reasons for the failure. Every employer subject to the
11 provisions of this chapter shall make application to the
12 commission on the forms prescribed by the commission for
13 that purpose; and any employer who terminates his or her
14 business or for any other reason is no longer subject to this
15 chapter shall immediately notify the commission on forms
16 to be furnished by the commission for that purpose.

**§23-2-4. Classification of industries; rate of premiums; author-
ity to adopt various systems; accounts.**

1 (a) The executive director with approval of the board of
2 managers is authorized to establish by rule a system for
3 determining the classification and distribution into classes
4 of employers subject to this chapter, a system for deter-
5 mining rates of premium taxes applicable to employers
6 subject to this chapter, a system of multiple policy options
7 with criteria for subscription and criteria for an annual
8 employer's statement providing both benefits liability
9 information and rate determination information.

10 (1) In addition, the rule shall provide for, but not be
11 limited to:

12 (A) Rate adjustments by industry or individual employer,
13 including merit rate adjustments;

14 (B) Notification regarding rate adjustments prior to the
15 quarter in which the rate adjustments will be in effect;

16 (C) Chargeability of claims; and

17 (D) Any further matters that are necessary and consis-
18 tent with the goals of this chapter;

19 (2) The rule shall require the establishment of a program
20 under which the commissioner may grant discounts on
21 premium rates for employers who meet either of the
22 following requirements:

23 (A) Have not incurred a compensable injury for one year
24 or more and who maintain an employee safety committee
25 or similar organization and make periodic safety inspec-
26 tions of the workplace;

27 (B) Successfully complete a loss prevention program,
28 including establishment of a drug-free workplace, pre-
29 scribed by the commission's safety and loss control office
30 and conducted by the commission or by any other person
31 approved by the commission;

32 (3) The rule shall be consistent with the duty of the
33 executive director and the board of managers to fix and
34 maintain the lowest possible rates of premium taxes
35 consistent with the maintenance of a solvent workers'
36 compensation fund and the reduction of any deficit that
37 may exist in the fund and in keeping with their fiduciary
38 obligations to the fund;

39 (4) The rule shall be consistent with generally accepted
40 accounting principles;

41 (5) The rule shall be consistent with classification and
42 rate-making methodologies found in the insurance indus-
43 try; and

44 (6) The rule shall be consistent with the principles of
45 promoting more effective workplace health and safety
46 programs as contained in article two-b of this chapter.

47 (b) In accordance with generally accepted accounting
48 principles, the workers' compensation commission shall
49 keep an accurate accounting of all money or moneys
50 earned, due and received by the workers' compensation
51 fund and of the liability incurred and disbursements made
52 against the fund; and an accurate account of all money or
53 moneys earned, due and received from each individual
54 subscriber and of the liability incurred and disbursements
55 made against the same.

56 (c) Prospective rates set in accordance with the provi-
57 sions of this article shall at all times be financially sound
58 in accordance with generally accepted accounting princi-
59 ples and fully fund the prospective claim obligations for
60 the year in which the rates were made. Rates, surcharges
61 or assessments for deficit management and deficit reduc-
62 tion purposes shall be fair and equitable, financially sound
63 in accordance with generally accepted accounting princi-
64 ples and sufficient to meet the payment obligations of the
65 fund.

66 (d) Notwithstanding any provision of subsection (c) of
67 this section to the contrary, except for those increases
68 made effective for fiscal year two thousand four by action
69 of the compensation programs performance council
70 heretofore established in article three, chapter twenty-
71 one-a of this code taken prior to the effective date of the
72 amendment and reenactment of this section, base rates,
73 assessments and surcharges, except for individual em-
74 ployer merit rate adjustments, shall not be increased
75 during fiscal years two thousand four and two thousand
76 five: *Provided*, That the portion of the rate increase
77 attributable to claims management incentive adjustments,
78 as determined by the compensation programs performance
79 council for fiscal year two thousand four prior to the
80 effective date of the amendment and reenactment of this
81 section by the Legislature in the year two thousand three,
82 shall not be considered a part of the employer's premium
83 taxes and shall not be subject to collection by the commis-
84 sion.

85 (e) Claims management incentive adjustments, whether
86 imposed in a manner that would result in either a debit or
87 a credit to any employer's account, shall not be considered
88 by the board of managers in its future rate determinations.

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

1 (a) For the purpose of creating a workers' compensation
2 fund, each employer who is required to subscribe to the
3 fund or who elects to subscribe to the fund shall pay
4 premium taxes calculated as a percentage of the em-
5 ployer's gross wages payroll as defined by the commission
6 at the rate determined by the commission and then in
7 effect plus any additional premium taxes developed from
8 rates, surcharges or assessments as determined by the
9 commission. At the time each employer subscribes to the
10 fund, the application required by the commission shall be
11 filed and a premium deposit equal to the first quarter's
12 estimated premium tax payment shall be remitted. The
13 minimum quarterly or other reporting period premium to
14 be paid by any employer is twenty-five dollars.

15 (1) Thereafter, the premium taxes shall be paid quarterly
16 or at other payment intervals established by the commis-
17 sion on or before the last day of the month following the
18 end of the quarter or designated payment interval and
19 shall be the prescribed percentage of the entire gross
20 wages of all employees, from which net payroll is calcu-
21 lated and paid, during the preceding quarter or other
22 designated payment interval. The commission may require
23 employers, in accordance with the provisions of rules
24 proposed by the executive director and promulgated by the
25 board of managers, to report gross wages and pay pre-
26 mium taxes monthly or at other intervals.

27 (2) Every subscribing employer shall make a gross wages
28 payroll report to the commission for the preceding report-

29 ing period. The report shall be on the form or forms
30 prescribed by the commission and shall contain all infor-
31 mation required by the commission.

32 (3) After subscribing to the fund, each employer shall
33 remit with each premium tax payment an amount calcu-
34 lated to be sufficient to maintain a premium deposit equal
35 to the premium payment for the previous reporting period.
36 The commission may reduce the amount of the premium
37 deposit required from seasonal employers for those
38 reporting periods during which employment is signifi-
39 cantly reduced. If the employer pays premium tax on a
40 basis other than quarterly, the commission may require the
41 deposit to be based upon some other time period. The
42 premium deposit shall be credited to the employer's
43 account on the books of the commission and used to pay
44 premium taxes and any other sums due the fund when an
45 employer becomes delinquent or in default as provided in
46 this article.

47 (4) All premium taxes and premium deposits required by
48 this article to be paid shall be paid by the employers to the
49 commission, which shall maintain a record of all sums so
50 received. Any sum mailed to the commission is considered
51 to be received on the date the envelope transmitting it is
52 postmarked by the United States postal service. All sums
53 received by the commission shall be deposited in the state
54 treasury to the credit of the workers' compensation
55 commission in the manner now prescribed by law.

56 (5) The commission shall encourage employer efforts to
57 create and maintain safe workplaces, to encourage loss
58 prevention programs and to encourage employer-provided
59 wellness programs, through the normal operation of the
60 experience rating formula, seminars and other public
61 presentations, the development of model safety programs
62 and other initiatives as may be determined by the execu-
63 tive director and the board of managers.

64 (b) Failure of an employer to timely pay premium taxes
65 as provided in subsection (a) of this section, to timely file
66 a payroll report or to maintain an adequate premium
67 deposit shall cause the employer's account to become
68 delinquent. No employer will be declared delinquent or be
69 assessed any penalty for the delinquency if the commission
70 determines that the delinquency has been caused by delays
71 in the administration of the fund. The commission shall,
72 in writing, within sixty days of the end of each reporting
73 period notify all delinquent employers of their failure to
74 timely pay premium taxes, to timely file a payroll report
75 or to maintain an adequate premium deposit. Each
76 employer who fails to timely file any payroll report or
77 timely pay the premium tax due with the report, or both,
78 for any reporting period commencing on and after the first
79 day of July, one thousand nine hundred ninety-five, shall
80 pay a late reporting or payment penalty of the greater of
81 fifty dollars or a sum obtained by multiplying the premium
82 tax due with the report by the penalty rate applicable to
83 that reporting period. The penalty rate to be used in a
84 workers' compensation commission's fiscal year is calcu-
85 lated annually on the first day of each fiscal year. The
86 penalty rate used to calculate the penalty for each report-
87 ing period in a fiscal year is the quotient, rounded to the
88 nearest higher whole number percentage rate, obtained by
89 dividing the sum of the prime rate plus four percent by
90 four. The prime rate is the rate published in the *Wall*
91 *Street Journal* on the last business day of the commission's
92 prior fiscal year reflecting the base rate on corporate loans
93 posted by at least seventy-five percent of the nation's
94 thirty largest banks. The late penalty shall be paid with
95 the most recent reporting period's report and payment and
96 is due when that reporting period's report and payment
97 are filed. If the late penalty is not paid when due, it may
98 be charged to and collected by the commission from the
99 employer's premium deposit account or otherwise as
100 provided by law. The notification shall demand the filing
101 of the delinquent payroll report and payment of delin-

102 quent premium taxes, the penalty for late reporting or
103 payment of premium taxes or premium deposit, the
104 interest penalty and an amount sufficient to maintain the
105 premium deposit before the end of the third month follow-
106 ing the end of the preceding reporting period. Interest
107 shall accrue and be charged on the delinquent premium
108 payment and premium deposit pursuant to section thirteen
109 of this article.

110 (c) Whenever the commission notifies an employer of the
111 delinquent status of its account, the notification shall
112 explain the legal consequence of subsequent default by an
113 employer required to subscribe to the fund and the legal
114 consequences of termination of an electing employer's
115 account.

116 (d) Failure by the employer, who is required to subscribe
117 to the fund and who fails to resolve the delinquency within
118 the prescribed period, shall place the account in default
119 and shall deprive the default employer of the benefits and
120 protection afforded by this chapter, including section six
121 of this article, and the employer is liable as provided in
122 section eight of this article. The default employer's
123 liability under these sections is retroactive to midnight of
124 the last day of the month following the end of the report-
125 ing period for which the delinquency occurs. The commis-
126 sion shall notify the default employer of the method by
127 which the employer may be reinstated with the fund. The
128 commission shall also notify the employees of the em-
129 ployer by written notice as hereinafter provided in this
130 section.

131 (e) Failure by any employer, who voluntarily elects to
132 subscribe, to resolve the delinquency within the prescribed
133 period shall place the account in default and shall auto-
134 matically terminate the election of the employer to pay
135 into the workers' compensation fund and shall deprive the
136 employer and the employees of the default elective em-
137 ployer of the benefits and protection afforded by this
138 chapter, including section six of this article, and the

139 employer is liable as provided in section eight of this
140 article. The default employer's liability under that section
141 is retroactive to midnight of the last day of the month
142 following the end of the payment period for which the
143 delinquency occurs. Employees who were the subject of
144 the default employer's voluntary election to provide them
145 the benefits afforded by this chapter shall have the
146 protection terminated at the time of their employer's
147 default.

148 (f) (1) Except as provided in subdivision (3) of this
149 subsection, any employer who is required to subscribe to
150 the fund and who is in default on the effective date of this
151 section or who subsequently defaults, and any employer
152 who has elected to subscribe to the fund and who defaults
153 and whose account is terminated prior to the effective date
154 of this section or whose account is subsequently termi-
155 nated, shall be restored immediately to the benefits and
156 protection of this chapter only upon the filing of all
157 delinquent payroll and other reports required by the
158 commission and payment into the fund of all unpaid
159 premiums, an adequate premium deposit, accrued interest
160 and the penalty for late reporting and payment. Interest
161 is calculated as provided by section thirteen of this article.

162 The commission shall not have the authority to waive
163 either premium or accrued interest: *Provided*, That until
164 termination of the commission, the commissioner shall
165 have the authority to waive either premium or accrued
166 interest if the waiver is part of the full and final resolution
167 of administrative or civil litigation. The provisions of
168 section seventeen of this article apply to any action or
169 decision of the commission under this section.

170 (2) The commission may restore a defaulted or termi-
171 nated employer through a reinstatement agreement. The
172 reinstatement agreement shall require the payment in full
173 of all premium taxes, premium deposits, the penalty for
174 late reporting and payment, past accrued interest and
175 future interest calculated pursuant to the provisions of

176 section thirteen of this article. Notwithstanding the filing
177 of a reinstatement application or the entering into of a
178 reinstatement agreement, the commission is authorized to
179 file a lien against the employer as provided by section five-
180 a of this article. In addition, entry into a reinstatement
181 agreement is discretionary with the commission. Its
182 discretion shall be exercised in keeping with the fiduciary
183 obligations owed to the workers' compensation fund. If
184 the commission declines to enter into a reinstatement
185 agreement and if the employer does not comply with the
186 provisions of subdivision (1) of this subsection, the com-
187 mission may proceed with any of the collection efforts
188 provided by section five-a of this article or as otherwise
189 provided by this code. Applications for reinstatement
190 shall: (A) Be made upon forms prescribed by the commis-
191 sion; (B) include a report of the gross wages payroll of the
192 employer which had not been reported to the commission
193 during the entire period of delinquency and default. The
194 gross wages information shall be certified by the employer
195 or its authorized agent; and (C) include a payment of a
196 portion of the liability equal to one half of one percent of
197 the gross payroll during the period of delinquency and
198 default or equal to another portion of the liability deter-
199 mined by rule but not to exceed the amount of the entire
200 liability due and owing for the period of delinquency and
201 default. An employer who applies for reinstatement is
202 entitled to the benefits and protection of this chapter on
203 the day a properly completed and acceptable application
204 which is accompanied by the application payment is
205 received by the commission: *Provided*, That if the commis-
206 sion reinstates an employer subject to the terms of a
207 reinstatement agreement, the subsequent failure of the
208 employer to make scheduled payments or to pay accrued
209 or future interest in accordance with the reinstatement
210 agreement or to timely file current reports and to pay
211 current premiums within the month following the end of
212 the period for which the report and payment are due, or to
213 otherwise maintain its account in good standing or, if the

214 reinstatement agreement does not require earlier restora-
215 tion of the premium deposit, to restore the premium
216 deposit to the required amount by the end of the repay-
217 ment period shall cause the reinstatement application and
218 the reinstatement agreement to be null, void and of no
219 effect, and the employer is denied the benefits and protec-
220 tion of this chapter effective from the date that the em-
221 ployer's account originally became delinquent.

222 (3) Any employer who fails to maintain its account in
223 good standing with regard to subsequent premium taxes
224 and premium deposits after filing an application for
225 reinstatement and prior to the final resolution of an
226 application for reinstatement by entering into a reinstate-
227 ment agreement or by payment of the liability in full as
228 provided in subdivision (1) of this subsection shall cause
229 the reinstatement application to be null, void and of no
230 effect and the employer shall be denied the benefits and
231 protection of this chapter effective from the date that the
232 employer's account originally became delinquent.

233 (4) Following any failure of an employer to comply with
234 the provisions of a reinstatement agreement, the commis-
235 sion may make and continue with any of the collection
236 efforts provided by this chapter or elsewhere in this code
237 even if the employer files another reinstatement applica-
238 tion.

239 (g) With the exception noted in subsection (h), section
240 one of this article, no employee of an employer required by
241 this chapter to subscribe to the workers' compensation
242 fund shall be denied benefits provided by this chapter
243 because the employer failed to subscribe or because the
244 employer's account is either delinquent or in default.

245 (h) (1) The provisions of this section shall not deprive any
246 individual of any cause of action which has accrued as a
247 result of an injury or death which occurred during any
248 period of delinquency not resolved in accordance with the

249 provisions of this article, or subsequent failure to comply
250 with the terms of the repayment agreement.

251 (2) Upon withdrawal from the fund or termination of
252 election of any employer, the employer shall be refunded
253 the balance due the employer of its deposit, after deduct-
254 ing all amounts owed by the employer to the workers'
255 compensation fund and other agencies of this state, and
256 the commission shall notify the employees of the employer
257 of the termination in the manner as the commission may
258 consider best and sufficient.

259 (3) Notice to employees provided in this section shall be
260 given by posting written notice that the employer is
261 defaulted under the compensation law of West Virginia
262 and in the case of employers required by this chapter to
263 subscribe and pay premiums to the fund, that the de-
264 faulted employer is liable to its employees for injury or
265 death, both in workers' compensation benefits and in
266 damages at common law or by statute; and in the case of
267 employers not required by this chapter to subscribe and
268 pay premiums to the fund, but voluntarily electing to do so
269 as provided in this article, that neither the employer nor
270 the employees are protected by the law as to any injury or
271 death sustained after the date specified in the notice. The
272 notice shall be in the form prescribed by the commission
273 and shall be posted in a conspicuous place at the chief
274 works of the employer, as it appears in records of the
275 commission. If the chief works of the employer cannot be
276 found or identified, the notices shall be posted at the front
277 door of the courthouse of the county in which the chief
278 works are located, according to the commission's records.
279 Any person who shall, prior to the reinstatement of the
280 employer, as provided in this section, or prior to sixty days
281 after the posting of the notice, whichever shall first occur,
282 remove, deface or render illegible the notice, shall be
283 guilty of a misdemeanor and, upon conviction thereof,
284 shall be fined one thousand dollars. The notice shall state
285 this provision upon its face. The commission may require

286 any sheriff, deputy sheriff, constable or other official of
287 the state of West Virginia, authorized to serve civil pro-
288 cess, to post the notice and to make return thereof of the
289 fact of the posting to the commission. Any failure of the
290 officer to post any notice within ten days after he or she
291 has received the notice from the commission, without just
292 cause or excuse, constitutes a willful failure or refusal to
293 perform a duty required of him or her by law within the
294 meaning of section twenty-eight, article five, chapter
295 sixty-one of this code. Any person actually injured by
296 reason of the failure has an action against the official, and
297 upon any official bond he or she may have given, for the
298 damages as the person may actually have incurred, but not
299 to exceed, in the case of any surety upon the bond, the
300 amount of the penalty of the bond. Any official posting
301 the notice as required in this subdivision is entitled to the
302 same fee as is now or may hereafter be provided for the
303 service of process in suits instituted in courts of record in
304 the state of West Virginia. The fee shall be paid by the
305 commission out of any funds at its disposal, but shall be
306 charged by the commission against the account of the
307 employer to whose delinquency the notice relates.

**§23-2-5a. Collection of premiums from defaulting employers;
interest and penalties; civil remedies; creation and
enforcement of lien against employer and pur-
chaser; duty of secretary of state to register liens;
distrain powers; insolvency proceedings; secretary
of state to withhold certificates of dissolution;
injunctive relief; bond; attorney fees and costs.**

- 1 (a) The workers' compensation commission in the name
- 2 of the state may commence a civil action against an
- 3 employer who, after due notice, defaults in any payment
- 4 required by this chapter. If judgment is against the
- 5 employer, the employer shall pay the costs of the action.
- 6 A civil action under this section shall be given preference
- 7 on the calendar of the court over all other civil actions.
- 8 Upon prevailing in a civil action, the commission is

9 entitled to recover its attorneys' fees and costs of action
10 from the employer.

11 (b) In addition to the provisions of subsection (a) of this
12 section, any payment, interest and penalty due and unpaid
13 under this chapter is a personal obligation of the employer
14 immediately due and owing to the commission and shall,
15 in addition, be a lien enforceable against all the property
16 of the employer: *Provided*, That the lien shall not be
17 enforceable as against a purchaser (including a lien
18 creditor) of real estate or personal property for a valuable
19 consideration without notice, unless docketed as provided
20 in section one, article ten-c, chapter thirty-eight of this
21 code: *Provided, however*, That the lien may be enforced as
22 other judgment liens are enforced through the provisions
23 of said chapter and the same is considered deemed by the
24 circuit court to be a judgment lien for this purpose.

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

46 (d) In case a business subject to the payments, interest
47 and penalties thereon imposed under this chapter is
48 operated in connection with a receivership or insolvency
49 proceeding in any state court in this state, the court under
50 whose direction the business is operated shall, by the entry
51 of a proper order or decree in the cause, make provisions,
52 so far as the assets in administration will permit, for the
53 regular payment of the payments, interest and penalties as
54 they become due.

55 (e) The secretary of state of this state shall withhold the
56 issuance of any certificate of dissolution or withdrawal in
57 the case of any corporation organized under the laws of
58 this state or organized under the laws of any other state
59 and admitted to do business in this state, until notified by
60 the commission that all payments, interest and penalties
61 thereon against the corporation which is an employer
62 under this chapter have been paid or that provision
63 satisfactory to the commission has been made for payment.

64 (f) In any case when an employer required to subscribe
65 to the fund defaults in payments of premium, premium
66 deposits, penalty or interest thereon, for as many as two
67 reporting periods, which reporting periods need not be
68 consecutive, and remains in default after due notice, the
69 commission may bring action in the circuit court of
70 Kanawha County to enjoin the employer from continuing
71 to carry on the business in which the liability was in-
72 curred: *Provided*, That the commission may as an alterna-
73 tive to this action require the delinquent employer to file
74 a bond in the form prescribed by the commission with
75 satisfactory surety in an amount not less than fifty percent
76 more than the payments, interest and penalties due.

**§23-2-9. Election of employer or employers' group to be self-
insured and to provide own system of compensation;
exceptions; catastrophe coverage; self administra-
tion; rules; penalties; regulation of self-insurers.**

1 (a) Notwithstanding any provisions of this chapter to the
2 contrary, the following types of employers or employers'

3 groups may apply for permission to self-insure their
4 workers' compensation risk including their risk of cata-
5 strophic injuries.

6 (1) The types of employers are:

7 (A) Any employer who is of sufficient capability and
8 financial responsibility to ensure the payment to injured
9 employees and the dependents of fatally injured employees
10 of benefits provided for in this chapter at least equal in
11 value to the compensation provided for in this chapter;

12 (B) Any employer or group of employers as provided for
13 subdivision (c) of such capability and financial responsi-
14 bility who maintains its own benefit fund or system of
15 compensation to which its employees are not required or
16 permitted to contribute and whose benefits are at least
17 equal in value to those provided for in this chapter; or

18 (C) Any employer who is signatory to a collective
19 bargaining agreement that allows for participation in a
20 group workers' compensation insurance program may join
21 with any other employer or employers that are signatory
22 to a collective bargaining agreement or agreements that
23 allow for participation in a group workers' compensation
24 program and jointly apply to the commission to collec-
25 tively self-insure their obligations under this chapter. The
26 employers must collectively meet the conditions set forth
27 in paragraph (A) or (B) of this subdivision. There shall be
28 joint and several liability for all employers who choose to
29 jointly self-insure under the provisions of this article.

30 (2) In order to be approved for self-insurance status, the
31 employer shall:

32 (A) Have an effective health and safety program at its
33 workplaces; and

34 (B) Provide security or bond in an amount and form
35 determined by the executive director with the approval of
36 the board of managers which shall balance the employer's

37 financial condition based upon an analysis of its audited
38 financial statements and the full accrued value of current
39 liability for future claim payments based upon generally
40 accepted actuarial and accounting principles of the em-
41 ployer's existing and expected liability.

42 (3) Any employer whose record upon the books of the
43 commission shows a liability, as determined on an accrued
44 basis against the workers' compensation fund incurred on
45 account of injury to or death of any of the employer's
46 employees, in excess of premiums paid by the employer,
47 shall not be granted the right, individually and directly or
48 from the benefit funds or system of compensation, to be
49 self-insured until the employer has paid into the workers'
50 compensation fund the amount of the excess of liability
51 over premiums paid, including the employer's proper
52 proportion of the liability incurred on account of catastro-
53 phes or second injuries as defined in section one, article
54 three of this chapter and charged against such fund.

55 (4) Upon a finding that the employer has met all of the
56 requirements of this section, the employer may be permit-
57 ted self-insurance status. An annual review of each self-
58 insurer's continuing ability to meet its obligations and the
59 requirements of this section shall be made by the workers'
60 compensation commission. This review shall include a
61 redetermination of the amount of security or bond which
62 shall be provided by the employer. Failure to provide any
63 new amount or form of security or bond may cause the
64 employer's self-insurance status to be terminated by the
65 workers' compensation commission. The security or bond
66 provided by employers prior to the second day of Febru-
67 ary, one thousand nine hundred ninety-five, shall continue
68 in full force and effect until the performance of the em-
69 ployer's annual review and the entry of any appropriate
70 decision on the amount or form of the employer's security
71 or bond.

72 (5) Whenever a self-insured employer furnishes security
73 or bond, including replacement and amended bonds and

74 other securities, as surety to ensure the employer's or
75 guarantor's payment of all obligations under this chapter
76 for which the security or bond was furnished, the security
77 or bond shall be in the most current form or forms ap-
78 proved and authorized by the commission for use by the
79 employer or its guarantors, surety companies, banks,
80 financial institutions or others in its behalf for that
81 purpose.

82 (b) (1) Notwithstanding any provision in this chapter to
83 the contrary, self-insured employers shall, effective the
84 first day of July, two thousand four, administer their own
85 claims. The executive director shall, pursuant to rules
86 promulgated by the board of managers, regulate the
87 administration of claims by employers granted permission
88 to self-insure their obligations under this chapter. Such
89 rules shall be promulgated at least thirty days prior to the
90 first day of July, two thousand four. A self-insured
91 employer shall comply with rules promulgated by the
92 board of managers governing the self-administration of its
93 claims.

94 (2) An employer or employers' group who self-insures its
95 risk and self-administers its claims shall exercise all
96 authority and responsibility granted to the commission in
97 this chapter and provide notices of action taken to effect
98 the purposes of this chapter to provide benefits to persons
99 who have suffered injuries or diseases covered by this
100 chapter. An employer or employers' group granted
101 permission to self-insure and self-administer its obliga-
102 tions under this chapter shall at all times be bound and
103 shall comply fully with all of the provisions of this chap-
104 ter. Furthermore, all of the provisions contained in article
105 four of this chapter pertaining to disability and death
106 benefits are binding on and shall be strictly adhered to by
107 the self-insured employer in its administration of claims
108 presented by employees of the self-insured employer.
109 Violations of the provisions of this chapter and such rules
110 relating to this chapter as may be approved by the board

111 of managers may constitute sufficient grounds for the
112 termination of the authority for any employer to self-
113 insure its obligations under this chapter. Claim notices
114 currently generated by the commission on behalf of self-
115 insured employers must be generated and sent by the self-
116 insured employer or its third-party administrator.

117 (c) Each self-insured employer shall, on or before the last
118 day of the first month of each quarter or other assigned
119 reporting period, file with the commission a certified
120 statement of the total gross wages and earnings of all of
121 the employer's employees subject to this chapter for the
122 preceding quarter or other assigned reporting period.
123 Each self-insured employer shall pay into the workers'
124 compensation fund as portions of its self-insured employer
125 premium tax:

126 (1) A sum sufficient to pay the employer's proper portion
127 of the expense of the administration of this chapter;

128 (2) A sum sufficient to pay the employer's proper portion
129 of the expense of claims for those employers who are in
130 default in the payment of premium taxes or other obliga-
131 tions;

132 (3) A sum sufficient to pay the employer's fair portion of
133 the expenses of the disabled workers' relief fund;

134 (4) A sum sufficient to maintain as an advance deposit
135 an amount equal to the previous quarter or other assigned
136 reporting period's payment of each of the foregoing three
137 sums;

138 (5) A sum as determined by the commission to be suffi-
139 cient to pay the employer's portion of rates, surcharges or
140 deficit management and deficit reduction assessments; and

141 (6) A sum as determined by the commission to pay the
142 employer's portion of self-insured catastrophic injury
143 benefits, and second injury payments on all self-insured
144 second injury claims other than second injury claims for

145 those employers self-insured for second injury. Any
146 employer previously self-insured for second injury benefits
147 shall continue to be responsible for payment of those
148 benefits.

149 (d) The required payments to the employer's injured
150 employees or dependents of fatally injured employees as
151 benefits provided for by this chapter including second
152 injury benefits and catastrophic injury benefits, if applica-
153 ble, shall constitute the remaining portion of the self-
154 insurer's premium tax.

155 (e) Notwithstanding any provision of subsection (d) of
156 this section to the contrary, except for those increases
157 made effective for fiscal year two thousand four by action
158 of the compensation programs performance council
159 heretofore established in article three, chapter twenty-
160 one-a of this code taken prior to the effective date of the
161 amendment and reenactment of this section, the portion of
162 the premium taxes for each self-insured employer as
163 determined under subdivisions (1) through (6), inclusive,
164 subsection (c) of this section shall not be increased during
165 fiscal years two thousand four, two thousand five and two
166 thousand six.

167 (f)(1) If an employer defaults in the payment of any
168 portion of its self-insured employer premium taxes,
169 surcharges or assessments, the commission shall, in an
170 appropriate case, determine the full accrued value based
171 upon generally accepted actuarial and accounting princi-
172 ples of the employer's liability including the costs of all
173 awarded claims and of all incurred but not reported
174 claims. The amount determined may, in an appropriate
175 case, be assessed against the employer. The commission
176 may demand and collect the present value of the defaulted
177 tax liability. Interest shall accrue upon the demanded
178 amount as provided for in section thirteen of this article
179 until the premium tax is fully paid. Payment of all
180 amounts then due to the commission and to the employer's
181 employees is a sufficient basis for reinstating the employer

182 to good standing with the fund. In addition, any self-
183 insured employer who, without good cause, ceases to make
184 required payments to the employer's injured employees or
185 dependents of fatally injured employees as benefits
186 provided for by this chapter including second injury
187 benefits and catastrophic injury benefits, if applicable, is
188 in default. The board of managers shall establish by rule
189 the procedures by which the existence or nonexistence of
190 good cause is to be determined by the commission.

191 (2) Premium tax assessments are special revenue taxes
192 under and according to the provisions of state workers'
193 compensation law and are considered to be tax claims, as
194 priority claims or administrative expense claims according
195 to those provisions under the law provided in the United
196 States bankruptcy code, Title 11 of the United States
197 Code. In addition, as the same was previously intended by
198 the prior provisions of this section, this amendment and
199 reenactment is for the purpose of clarification of the
200 taxing authority of the workers' compensation commis-
201 sion.

202 (g) Each self-insured employer shall elect whether or not
203 to self-insure its catastrophic injury risk as defined in
204 subsection (c), section one, article three of this chapter. A
205 self-insured employer who elects to insure its catastrophic
206 risk through a policy of excess insurance obtained through
207 a private insurance carrier approved by the commission
208 shall provide a copy of the policy to the commission. Upon
209 termination of the commission, self-insured employers
210 shall either self-insure their catastrophic risk or insure
211 their catastrophic risk through a policy of excess insurance
212 obtained through a private insurance carrier approved by
213 the insurance commissioner. Self-insured employers shall
214 also reinsure their catastrophic risks.

215 (1) If the employer does not elect to self-insure its
216 catastrophic risk, the employer shall pay premium taxes
217 for this coverage in the same manner as is provided for in
218 section four of this article and in rules adopted to imple-

219 ment that section. As stated in this subsection, this option
220 shall expire upon termination of the commission. If the
221 employees of that employer suffer injury or death from a
222 catastrophe, the payment of the resulting benefits shall be
223 made from the catastrophe reserve of the surplus fund
224 provided for in subsection (b), section one, article three of
225 this chapter. Any portion of an employer's catastrophic
226 liability insured and paid under a policy of insurance
227 purchased by the employer shall not be included in the
228 liabilities upon which the employer's security or bond is
229 determined in subsection (a) of this section.

230 (2) If an otherwise self-insured employer elects to self-
231 insure its catastrophic risk, the security or bond required
232 in subsection (a) of this section shall include the liability
233 for the catastrophic risk.

234 (h) For those employers previously permitted to self-
235 insure their second injury risks, the amount of the security
236 or bond required in subsection (a) of this section shall
237 include the liability for that risk. All benefits provided for
238 by this chapter which are awarded to the employer's
239 employees which constitute second injury life awards shall
240 be paid by the employer and not the commission.

241 (i) The commission may create, implement, establish and
242 administer a perpetual self-insurance security risk pool of
243 funds, sureties, securities, insurance provided by private
244 insurance carriers or other states' programs, and other
245 property, of both real and personal properties, to secure
246 the payment of obligations of self-insured employers. If a
247 pool is created, the board of managers shall adopt rules for
248 the organizational plan, participation, contributions and
249 other payments which may be required of self-insured
250 employers under this section. The board of managers may
251 adopt a rule authorizing the commission to assess each
252 self-insured employer in proportion according to each
253 employer's portion of the unsecured obligation and
254 liability or to assess according to some other method
255 provided for by rule which shall properly create and fund

256 the risk pool to serve the needs of employees, employers
257 and the workers' compensation fund by providing ade-
258 quate security. The board of managers, in establishing a
259 security risk pool, may authorize the executive director to
260 use any assessments, premium taxes and revenues and
261 appropriations as may be made available to the commis-
262 sion. Effective upon termination of the commission, all
263 statutory and regulatory authority provided to the com-
264 mission and board of managers over pools created pursu-
265 ant to this section shall transfer to the insurance commis-
266 sioner: *Provided*, That the funds contained in the security
267 pool shall be deposited into the old fund and the funds
268 contained in the guaranty pool shall be deposited in the
269 self-insured employer guaranty risk pool created in article
270 two-c of this chapter. All assets held by the commission
271 for security pursuant to 85 CSR §19 (2004) shall transfer
272 to the insurance commissioner.

273 (j) Any self-insured employer which has had a period of
274 inactivity due to the nonemployment of employees which
275 results in its reporting of no wages on reports to the
276 commission for a period of four or more consecutive
277 quarters shall have its status at the commission inacti-
278 vated and shall apply for reactivation to status as a self-
279 insured employer prior to its reemployment of employees.
280 Despite the inactivation, the self-insured employer shall
281 continue to make payments on all awards for which it is
282 responsible. Upon application for reactivation of its status
283 as an operating self-insured employer, the employer shall
284 document that it meets the eligibility requirements needed
285 to maintain self-insured employer status under this section
286 and any rules adopted to implement it. If the employer is
287 unable to requalify and obtain approval for reactivation,
288 the employer shall, effective with the date of employment
289 of any employee, become a subscriber to the workers'
290 compensation fund and, upon termination of the commis-
291 sion, shall purchase workers' compensation insurance as
292 provided for in article two-c of this chapter, but shall
293 continue to be a self-insurer as to the prior period of active

294 status and to furnish security or bond and meet its prior
295 self-insurance obligations.

296 (k) In any case under the provisions of this section that
297 require the payment of compensation or benefits by an
298 employer in periodical payments and the nature of the case
299 makes it possible to compute the present value of all future
300 payments, the commission may, in its discretion, at any
301 time compute and permit to be paid into the workers'
302 compensation fund an amount equal to the present value
303 of all unpaid future payments on the award or awards for
304 which liability exists in trust. Thereafter, the employer
305 shall be discharged from any further portion of premium
306 tax liability upon the award or awards and payment of the
307 award or awards shall be assumed by the commission.
308 Upon termination of the commission, those self-insured
309 employers may thereafter purchase workers' compensation
310 insurance as provided for in article two-c of this chapter,
311 but said self-insured employers shall remain liable for
312 their self-insured employer claims liabilities.

313 (l) Any employer subject to this chapter, who elects to
314 carry the employer's own risk by being self-insured
315 employer and who has complied with the requirements of
316 this section and of any applicable rules, shall not be liable
317 to respond in damages at common law or by statute for the
318 injury or death of any employee, however occurring, after
319 the election's approval and during the period that the
320 employer is allowed to carry the employer's own risk.

321 (m) An employer may not hire any person or group to
322 self-administer claims under this chapter as a third-party
323 administrator unless the person or group has been deter-
324 mined to be qualified to be a third-party administrator by
325 the commission pursuant to rules adopted by the board of
326 managers. Any person or group whose status as a third-
327 party administrator has been revoked, suspended or
328 terminated by the commission shall immediately cease
329 administration of claims and shall not administer claims
330 unless subsequently authorized by the commission.

331 (n) All regulatory, oversight, and document gathering
332 authority provided to the commission under section nine,
333 article two, chapter twenty-three shall transfer to the
334 insurance commissioner and the industrial council upon
335 termination of the commission.

ARTICLE 2A. SUBROGATION.

§23-2A-1. Subrogation; limitations; effective date.

1 (a) Where a compensable injury or death is caused, in
2 whole or in part, by the act or omission of a third party,
3 the injured worker or, if he or she is deceased or physically
4 or mentally incompetent, his or her dependents or personal
5 representative are entitled to compensation under the
6 provisions of this chapter and shall not by having received
7 compensation be precluded from making claim against the
8 third party.

9 (b) Notwithstanding the provisions of subsection (a) of
10 this section, if an injured worker, his or her dependents or
11 his or her personal representative makes a claim against
12 the third party and recovers any sum for the claim, the
13 commission or a self-insured employer shall be allowed
14 statutory subrogation with regard to medical benefits paid
15 as of the date of the recovery. The commission or self-
16 insured employer shall permit the deduction from the
17 amount received reasonable attorney's fees and reasonable
18 costs. It is the duty of the injured worker, his or her
19 dependents, his or her personal representative, or his or
20 her attorney to notify the commission and the employer
21 when the claim is filed against the third party.

22 (c) In the event that an injured worker, his or her de-
23 pendents or personal representative makes a claim against
24 a third party, there shall be, and there is hereby created, a
25 statutory subrogation lien upon the moneys received which
26 shall exist in favor of the commission or self-insured
27 employer. Any injured worker, his or her dependents or
28 personal representative who receives moneys in settlement

29 in any manner of a claim against a third party remains
30 subject to the subrogation lien until payment in full of the
31 amount permitted to be subrogated under subsection (b) of
32 this section is paid.

33 (d) Effective the first day of January, two thousand six,
34 the commission, any successor to the commission, any
35 other private carrier and any self-insured employer shall
36 be allowed statutory subrogation with regard to all
37 medical and indemnity benefits actually paid as of the
38 date of the recovery. The commission, successor to the
39 commission, any other private carrier and the self-insured
40 employer shall permit the deduction from the amount
41 received a reasonable attorney's fees and costs and may
42 negotiate the amount to accept as subrogation. It is the
43 duty of the injured worker, his or her dependents, his or
44 her personal representative or his or her attorney to give
45 reasonable notice to the commission, successor to the
46 commission, any other private carrier, or the self-insured
47 employer after a claim is filed against the third party and
48 prior to the disbursement of any third party recovery. The
49 statutory subrogation described in this section does not
50 apply to uninsured and underinsured motorist coverage or
51 any other insurance coverage purchased by the injured
52 worker or on behalf of the injured worker. If the injured
53 worker obtains a recovery from a third party and the
54 injured worker, personal representative or the injured
55 worker's attorney fails to protect the statutory right of
56 subrogation created herein, the injured worker, personal
57 representative and the injured worker's attorney shall lose
58 the right to retain attorney fees and costs out of the
59 subrogation amount. In addition, such failure creates a
60 cause of action for the private carrier or self-insured
61 employer against the injured worker, personal representa-
62 tive and the injured worker's attorney for the amount of
63 the full subrogation amount and the reasonable fees and
64 costs associated with any such cause of action. The right
65 of subrogation granted by the provisions of this subsection
66 shall not attach to any claim arising from a right of action

67 which arose or accrued, in whole or in part, prior to the
68 effective date of the amendment and reenactment of this
69 section during the year two thousand five.

70 (e) The right of subrogation granted the commission in
71 subsections (a) through (c), inclusive, of this section shall
72 be exercised by the insurance commissioner and his or her
73 designated administrator of the old fund, as set forth in
74 article two-c of this chapter, for any claim arising from a
75 right of action which arose or accrued, in whole or in part,
76 prior to the effective date of the amendment and
77 reenactment of this section during the year two thousand
78 five. The insurance commissioner and his or her desig-
79 nated administrator shall be paid a recovery fee of ten
80 percent of the actual amount recovered through
81 subrogation with the remainder to be deposited into the
82 old fund.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-1. Findings and purpose.

1 (a) The Legislature finds that:

2 (1) There is a long-term actuarial funding crisis in the
3 state-run monopolistic workers' compensation system;

4 (2) Similar short-term and long-term crisis have been
5 ongoing during the past two decades;

6 (3) During the current crisis, employers in West Virginia
7 find it increasingly difficult to afford the rates charged by
8 the workers' compensation commission for workers'
9 compensation coverage and that paying said rates ad-
10 versely impacts employers' ability to compete in a global
11 economic environment;

12 (4) The cost of obtaining workers' compensation cover-
13 age from the state system may result in many employers
14 leaving the state;

15 (5) Employers' access to competitive workers' compensa-
16 tion rates and the resulting economic development benefit
17 is of utmost importance to the citizens of West Virginia;

18 (6) A mechanism is needed to provide an enduring
19 solution to this recurring workers' compensation crisis;

20 (7) An employers' mutual insurance company or a similar
21 entity has proven to be a successful mechanism in other
22 states for helping employers secure insurance and for
23 stabilizing the insurance market;

24 (8) There is a substantial public interest in creating a
25 method to provide a stable workers' compensation insur-
26 ance market in this state;

27 (9) The state-run workers' compensation program is a
28 substantial actual and potential liability to the state;

29 (10) There is substantial public benefit in transferring
30 certain actual and potential future liability of the state to
31 the private sector and creating a stable self-sufficient
32 entity which will be a potential source of workers' com-
33 pensation coverage for employers in this state;

34 (11) A stable, financially viable insurer in the private
35 sector will aid in providing a continuing source of insur-
36 ance funds to compensate injured workers; and

37 (12) Because the public will greatly benefit from the
38 formation of an employers' mutual insurance company,
39 state efforts to encourage and support the formation of
40 such an entity, including providing funding for the entity's
41 initial capital, is in the clear public interest.

42 (b) The purpose of this article is to create a mechanism
43 for the formation of an employers' mutual insurance
44 company that will provide:

45 (1) A means for employers to obtain workers' compensa-
46 tion insurance that is reasonably available and affordable;
47 and

48 (2) Compensation to employees of mutual policyholders
49 who suffer work place injuries as defined in chapter
50 twenty-three of this code.

§23-2C-2. Definitions.

1 (a) "Executive director" means the executive director of
2 the West Virginia workers' compensation commission as
3 provided in section one-b, article one, chapter twenty-
4 three of this code.

5 (b) "Commission" means the West Virginia workers'
6 compensation commission as provided by section one,
7 article one, chapter twenty-three of this code.

8 (c) "Insurance commissioner" means the insurance
9 commissioner of West Virginia as provided in section one,
10 article two, chapter thirty-three of this code.

11 (d) "Company" or "successor to the commission" means
12 the employers' mutual insurance company created pursu-
13 ant to the terms of this article.

14 (e) "Policy default" shall mean a policyholder that has
15 failed to comply with the terms of its workers' compensa-
16 tion insurance policy and is consequently without workers'
17 compensation insurance coverage.

18 (f) "Industrial insurance" means insurance which
19 provides all compensation and benefits required by
20 chapter twenty-three of this code.

21 (g) "Insurer" includes:

22 (1) A self-insured employer; and

23 (2) A private carrier.

24 (h) "Industrial council" means the advisory group
25 established in section five of this article.

26 (i) "Mutualization transition fund" shall be a fund over
27 which the state treasurer is custodian. Moneys transferred

28 or otherwise payable to the mutualization transition fund
29 shall be deposited in the state treasury to the credit of the
30 mutualization transition fund. Disbursements shall be
31 made from the mutualization transition fund upon requisitions
32 signed by the executive director, and, upon termination
33 of the commission, the insurance commissioner, and
34 shall be reasonably related to the legal, operational,
35 consultative and human resource related expenses associated
36 with the establishment of the company and the
37 transferring of personnel from the commission to the
38 company.

39 (j) "New fund" shall mean a fund owned and operated by
40 the commission and, upon termination of the commission,
41 the successor organization of the West Virginia workers'
42 compensation commission and shall consist of those funds
43 transferred to it from the workers' compensation fund and
44 any other applicable funds. New fund shall include all
45 moneys due and payable to the workers' compensation
46 fund for the quarters ending the thirtieth day of September,
47 two thousand five and the thirty-first day of December,
48 two thousand five, which have not been collected by
49 the workers' compensation fund as of the thirty-first day
50 of December, two thousand five.

51 (k) "New fund liabilities" shall mean all claims payment
52 obligations (indemnity and medical expenses) for all
53 claims, actual and incurred but not reported, for any claim
54 with a date of injury or last exposure on or after the first
55 day of July, two thousand five: *Provided*, That new fund
56 liabilities shall begin with claims payments becoming due
57 and owing on said claims on or after the first day of
58 January, two thousand six.

59 (l) "Old fund" shall mean a fund held by the state treasurer's
60 office consisting of those funds transferred to it
61 from the workers' compensation fund or other sources and
62 those funds due and owing the workers' compensation
63 fund as of the thirtieth day of June, two thousand five that
64 are thereafter collected. The old fund and assets therein

65 shall remain property of the state and shall not novate or
66 otherwise transfer to the company.

67 (m) "Old fund liabilities" mean all claims payment
68 obligations (indemnity and medical expenses), related
69 liabilities and appropriate administrative expenses
70 necessary for the administration of all claims, actual and
71 incurred but not reported, for any claim with a date of
72 injury or last exposure on or before the thirtieth day of
73 June, two thousand five: *Provided*, That old fund liabilities
74 shall include all claims payments for any claim, regardless
75 of date of injury or last exposure, through the thirty-first
76 day of December, two thousand five: *Provided, however*,
77 That old fund liabilities shall include all claims with dates
78 of injuries or last exposure prior to the first day of July,
79 two thousand four for bankrupt self-insured employers
80 that had defaulted on their claims obligations which have
81 been recognized by the commission in its actuarially
82 determined liability number as of the thirtieth day of June,
83 two thousand five.

84 (n) "Private carrier" means any insurer or the legal
85 representative of an insurer authorized by the insurance
86 commissioner to provide workers' compensation insurance
87 pursuant to this chapter and which maintains an office in
88 the state. The term does not include a self-insured em-
89 ployer or private employers but shall include any successor
90 to the commission.

91 (o) "Uninsured employer fund" means a fund held by the
92 state treasurer's office consisting of those funds trans-
93 ferred to it from the workers' compensation fund and any
94 other source. Disbursements from the uninsured employer
95 fund shall be upon requisitions signed by the insurance
96 commissioner and the administrator of the fund, and as
97 otherwise set forth in an exempt legislative rule promul-
98 gated by the workers' compensation board of managers.

99 (p) "Self-insured employer guaranty risk pool" shall be
100 a fund held by the state treasurer's office consisting of

101 those funds transferred to it from the guaranty pool
102 created pursuant to 85 CSR §19 (2004) and any future
103 funds collected through continued administration of that
104 exempt legislative rule as administered by the insurance
105 commissioner. Disbursements shall be made from the self-
106 insured employer guaranty risk pool upon requisitions
107 signed by the insurance commissioner and the administra-
108 tor of the fund. The obligations of the fund shall be as
109 provided in 85 CSR §19 (2004). The company shall
110 administer the self-insured employer guaranty risk pool
111 for a term and administrative fee as provided in the
112 administration of the old fund.

113 (q) "Self-insured employer security risk pool" shall be a
114 fund held by the state's treasurer consisting of those funds
115 paid into it through the insurance commissioner's adminis-
116 tration of 85 CSR §19 (2004). Disbursement from said
117 fund shall be made from the self-insured employer security
118 risk pool upon requisitions signed by the insurance
119 commissioner and the administrator of the fund. The
120 obligations of the fund shall be as provided in 85 CSR §19:
121 *Provided*, That said liabilities shall be limited to those
122 self-insured employers who default on their claims obliga-
123 tions after the termination of the commission. The com-
124 pany shall administer the self-insured employer security
125 risk pool for a term and administrative fee as provided in
126 the administration of the old fund.

127 (r) "Private carrier guaranty fund" shall be a fund held
128 by the state treasurer's office consisting of funds deposited
129 pursuant to this article. Disbursements shall be made
130 from the private carrier guaranty fund upon requisitions
131 signed by the insurance commissioner and the administra-
132 tor of the fund. The obligations of the fund shall be as
133 provided in this article. The company shall administer the
134 private carrier guaranty fund for a term and administra-
135 tive fee as provided in the administration of the old fund.

136 (s) "Assigned risk fund" shall be a fund held by the state
137 treasurer's office consisting of funds deposited pursuant to

138 this article. Disbursements shall be made from the
139 assigned risk fund upon requisitions signed by the insur-
140 ance commissioner. The obligations of the fund shall be as
141 provided in this article.

142 (t) "Comprehensive financial plan" shall mean the plan
143 compiled by the director for acceptance by the insurance
144 commissioner identifying and forecasting cash flows,
145 funding sources, debt terms and structures, and scheduled
146 amortization and permanent resolution of all old fund
147 liabilities. The comprehensive financial plan shall provide
148 for the retirement of the revenue bonds authorized by
149 article two-d, chapter twenty-three of this code and all
150 realized and potential claims against the old fund shall be
151 fully reserved. The comprehensive financial plan may
152 include any other information the insurance commissioner
153 may require as a basis for managing the post-transition
154 fiscal soundness of the old fund.

**§23-2C-3. Creation of employer mutual as successor organiza-
tion of the West Virginia workers' compensation
commission.**

1 (a) On or before the first day of June, two thousand five,
2 the executive director may take such actions as are
3 necessary to establish an employers' mutual insurance
4 company as a domestic, private, nonstock, corporation to:

5 (1) Insure employers against liability for injuries and
6 occupational diseases for which their employees may be
7 entitled to receive compensation pursuant to chapter
8 twenty-three of this code and federal Longshore and
9 Harbor Workers' Compensation Act, 33 U. S. C. §901, *et*
10 *seq.*;

11 (2) Provide employer's liability insurance incidental to
12 and provided in connection with the insurance specified in
13 paragraph (1), including coal-workers pneumoconiosis
14 coverage and employer excess liability coverage as pro-
15 vided in this chapter; and

16 (3) Transact such other kinds of property and casualty
17 insurance for which the company is otherwise qualified
18 under the provisions of this code.

19 (4) The company shall not sell, assign or transfer sub-
20 stantial assets or ownership of the company.

21 (b) If the executive director establishes a domestic
22 mutual insurance company pursuant to subsection (a) of
23 this section:

24 (1) As soon as practical, the company established
25 pursuant to the provisions of this article shall, through a
26 vote of a majority of its provisional board, file its corpo-
27 rate charter and bylaws with the insurance commissioner
28 and apply for a license with the insurance commissioner to
29 transact insurance in this state. Notwithstanding any
30 other provision of this code, the insurance commissioner
31 shall act on the documents within fifteen days of the filing
32 by the company.

33 (2) In recognition of the workers' compensation insur-
34 ance liability insurance crisis in this state at the time of
35 enactment of this article and the critical need to expedite
36 the initial operation of the company, the Legislature
37 hereby authorizes the insurance commissioner to review
38 the documentation submitted by the company and to
39 determine the initial capital and surplus requirements of
40 the company, notwithstanding the provisions of section
41 five-b, article three of chapter thirty-three. The company
42 shall furnish the insurance commissioner with all informa-
43 tion and cooperate in all respects necessary for the insur-
44 ance commissioner to perform the duties set forth in this
45 section and in other provisions of this chapter and chapter
46 thirty-three. The insurance commissioner shall monitor
47 the economic viability of the company during its initial
48 operation on not less than a monthly basis, until such time
49 as the commissioner in his or her discretion, determines
50 that monthly reporting is not necessary. In all other

51 respects the company shall be subject to comply with the
52 applicable provisions of chapter thirty-three of this code.

53 (3) Subject to the provisions of subsection (4) of this
54 section, the insurance commissioner may waive other
55 requirements imposed on mutual insurance companies by
56 the provisions of chapter thirty-three as the insurance
57 commissioner determines is necessary to enable the
58 company to begin insuring employers in this state at the
59 earliest possible date.

60 (4) Within forty months of the date of the issuance of its
61 license to transact insurance, the company shall comply
62 with the capital and surplus requirements set forth in
63 subsection (a), section five-b, article three, chapter thirty-
64 three of this code in effect on the effective date of this
65 enactment, unless said deadline is extended by the insur-
66 ance commissioner.

67 (c) For the duration of its existence, the company is not
68 and shall not be considered a department, unit, agency, or
69 instrumentality of the state for any purpose. All debts,
70 claims, obligations and liabilities of the company, when-
71 ever incurred, shall be the debts, claims, obligations and
72 liabilities of the company only and not of the state or of
73 any department, unit, agency, instrumentality, officer or
74 employee of the state.

75 (d) The moneys of the company are not and shall not be
76 considered part of the general revenue fund of the state.
77 The debts, claims, obligations and liabilities of the com-
78 pany are not and shall not be considered a debt of the state
79 or a pledge of the credit of the state.

80 (e) The company is not subject to provisions of article
81 nine-a, chapter six of this code; the provisions of chapter
82 twenty-nine-b of this code; the provisions of article three,
83 chapter five-a of this code; the provisions of article six,
84 chapter twenty-nine of this code; the provisions of article
85 six-a of said chapter; or the provisions of chapter twelve
86 of this code.

87 (f) If the commission has been terminated, effective upon
88 said termination, private carriers, including the company,
89 shall not be subject to payment of premium taxes, sur-
90 charges and credits contained in article three of chapter
91 thirty-three of this code on premiums received for cover-
92 age under this chapter. In lieu thereof, the workers'
93 compensation insurance market shall be subject to the
94 following:

95 (1) Each fiscal year, the insurance commissioner shall
96 calculate a percentage surcharge to be collected by each
97 private carrier from its policy holders. The surcharge
98 percentage shall be calculated by dividing the previous
99 fiscal year's total premiums collected plus deductible
100 payments by all employers into the portion of the insur-
101 ance commissioner's budget amount attributable to
102 regulation of the private carrier market. This resulting
103 percentage shall be applied to each policy holder's pre-
104 mium payment and deductible payments as a surcharge
105 and remitted to the insurance commissioner. Said sur-
106 charge shall be remitted within ten (10) days of receipt of
107 premium payments, whenever said payments are made by
108 its insureds;

109 (2) Each fiscal year, the insurance commissioner shall
110 calculate a percentage surcharge to be remitted on a
111 monthly basis by self-insured employers and said percent-
112 age shall be calculated by dividing previous year's
113 self-insured payroll in the state into the portion of the
114 insurance commissioner's budget amount attributable to
115 regulation of the self-insured employer market. This
116 resulting percentage shall be applied to each self-insured
117 employer's monthly payroll and the resulting amount shall
118 be remitted as a regulatory surcharge by each self-insured
119 employer. The workers' compensation board of managers
120 may promulgate a rule for implementation of this section.
121 The company, all other private carriers and all self-insured
122 employers shall furnish the insurance commissioner with
123 all required information and cooperate in all respects
124 necessary for the insurance commissioner to perform the

125 duties set forth in this section and in other provisions of
126 this chapter and chapter thirty-three. The surcharge shall
127 be calculated so as to only defray the costs associated with
128 the administration of chapter twenty-three of this code
129 and the funds raised shall not be used for any other
130 purpose.

131 (3) Upon termination of the commission, the company
132 and all other private carriers shall collect a premiums
133 surcharge from their policy holders equal to ten percent,
134 or such higher or lower rate as annually determined, by
135 the first day of May of each year, by the insurance com-
136 missioner to produce forty-five million dollars annually, of
137 each policy holder's periodic premium amount for work-
138 ers' compensation insurance. Additionally, by the first day
139 of May each year, the self-insured employer community
140 shall be assessed a cumulative total of nine million dollars.
141 The methodology for the assessment shall be fair and
142 equitable and determined by exempt legislative rule issued
143 by the workers' compensation board of managers. The
144 amount collected shall be remitted to the insurance
145 commissioner for deposit in the workers' compensation
146 debt reduction fund created in section five, article two-d
147 of this chapter.

148 (g) The new premiums surcharge imposed by subdivision
149 (2), subsection (f) of this section shall sunset and not be
150 collectible with respect to workers' compensation insur-
151 ance premiums paid when the policy is renewed on or after
152 the first day of the month following the month in which
153 the Governor certifies to the Legislature that the revenue
154 bonds issued pursuant to article two-d, chapter twenty-
155 three of this code have been retired and that the unfunded
156 liability of the old fund has been paid or has been provided
157 for in its entirety, whichever occurs last.

§23-2C-4. Governance and organization.

1 (a) (1) The commission shall implement the initial
2 formation and organization of the company as provided by
3 this article.

4 (2) From the inception of the company, until the first day
5 of January, two thousand six, the company shall be
6 governed by a provisional board of directors consisting of
7 the three-persons on the executive committee of the
8 workers' compensation board of managers and four
9 members of the Legislature. Two members of the West
10 Virginia Senate and two members of the West Virginia
11 House of Delegates shall serve as advisory nonvoting
12 members of the board. The Governor shall appoint the
13 legislative members to the board. No more than three of
14 the legislative members shall be of the same political
15 party. The provisional board shall have the authority to
16 function as necessary to establish the company and cause
17 it to become operational, including the right to contract on
18 behalf of the company. Each voting board member shall
19 receive compensation of not more than three hundred fifty
20 dollars per day and actual and necessary expenses for each
21 day during which he or she is required to and does attend
22 a meeting of the board.

23 (3) The provisional board shall develop procedures for
24 the nomination of the board of directors that will succeed
25 the provisional board on the first day of January, two
26 thousand six, and for the conduct of the election, to be
27 held no later than the first day of November, two thousand
28 five, and shall give notice of the election to the current
29 subscribers to the workers' compensation fund. These
30 procedures shall be exempt from the provisions of article
31 three, chapter twenty-nine-a of this code.

32 (4) Except as limited by this section and applicable
33 insurance rules and statutes, the company may: (1) On its
34 own; (2) through the formation or acquisition of subsidiar-
35 ies; or (3) through a joint enterprise, offer:

36 (A) Workers' compensation insurance in a state other
37 than West Virginia to the extent it also provides workers'
38 compensation or occupational disease insurance coverage
39 to the employer pursuant to chapter twenty-three of this
40 code;

41 (B) Other workers' compensation products and services
42 and related products and services in West Virginia or other
43 states; and

44 (C) Other property and casualty insurance in West
45 Virginia and other states.

46 (b) Effective the first day of January, two thousand six,
47 the company shall be governed by a board of directors
48 consisting of seven directors, as follows:

49 (1) Three owners or officers of an entity that has pur-
50 chased or will immediately upon termination of the
51 commission purchase and maintain an active workers'
52 compensation insurance policy from the company. At least
53 one shall be a certified public accountant with financial
54 management or pension or insurance audit expertise and
55 at least one shall be an attorney with financial manage-
56 ment experience.

57 (2) Two directors who have substantial experience as an
58 officer or employee of a company in the insurance indus-
59 try, one of whom is from a company with less than fifty
60 employees;

61 (3) One director with general knowledge and experience
62 in business management who is an officer and employee of
63 the company and is responsible for the daily management
64 of the company; and

65 (4) The chief executive officer of the company.

66 (c) The directors and officers of the company are to be
67 chosen in accordance with the articles of incorporation
68 and bylaws of the company. The initial board of directors
69 selected shall serve for the following terms: (1) Two for
70 four-year terms; (2) two for three-year terms; (3) two for
71 two-year terms; and (4) one for a one-year term. Thereaf-
72 ter, the directors shall serve staggered terms of four years.
73 No director chosen may serve more than two consecutive
74 terms, except for the chief executive officer of the com-

75 pany. Furthermore, owners, directors, or employees of
76 employers otherwise licensed to write workers' compensa-
77 tion insurance in this state or licensed or otherwise
78 authorized to act as a third-party administrator shall not
79 be eligible to be nominated, appointed, elected or serve on
80 the company's board of directors.

81 (d) The executive director shall prepare and file articles
82 of incorporation and bylaws in accordance with the
83 provisions of this article and the provisions of chapters
84 thirty-one and thirty-three of this code.

§23-2C-5. Creation of the industrial council; duties.

1 (a) There is hereby created within the office of the
2 insurance commissioner an industrial council.

3 (b) On or before the first day of July, two thousand five,
4 the governor with the advice and consent of the Senate,
5 shall appoint five voting members to the industrial council
6 who meet the requirements and qualifications prescribed
7 in this subsection. Two members of the West Virginia
8 Senate and two members of the West Virginia House of
9 Delegates shall serve as advisory nonvoting members of
10 the board. The governor shall appoint the legislative
11 members to the board. No more than three of the legisla-
12 tive members may be of the same political party. The
13 insurance commissioner shall serve as an advisory nonvot-
14 ing member of the board.

15 (1) (A) Five members shall be appointed by the governor
16 with the advice and consent of the Senate for terms that
17 begin upon appointment after the effective date of this
18 legislation and expire as follows:

19 (i) One member shall be appointed for a term ending the
20 thirtieth day of June, two thousand seven;

21 (ii) Two members shall be appointed for a term ending
22 the thirtieth day of June, two thousand eight; and

23 (iii) Two members shall be appointed for a term ending
24 the thirtieth day of June, two thousand nine.

25 (B) Except for appointments to fill vacancies, each
26 subsequent appointment shall be for a term ending the
27 thirtieth day of June of the fourth year following the year
28 the preceding term expired. In the event a vacancy occurs,
29 it shall be filled by appointment for the unexpired term.
30 A member whose term has expired shall continue in office
31 until a successor has been duly appointed and qualified.
32 No member of the council may be removed from office by
33 the governor except for official misconduct, incompetency,
34 neglect of duty or gross immorality.

35 (C) No appointed member may be a candidate for or hold
36 elected office. Members may be reappointed for no more
37 than two full terms.

38 (2) Each of the appointed voting members of the council
39 shall be appointed based upon his or her demonstrated
40 knowledge and experience to effectively accomplish the
41 purposes of this chapter. They shall meet the minimum
42 qualifications as follows:

43 (A) Each shall hold a baccalaureate degree from an
44 accredited college or university: *Provided*, That no more
45 than one of the appointed voting members may serve
46 without a baccalaureate degree from an accredited college
47 or university if the member has a minimum of fifteen
48 years' experience in his or her field of expertise as required
49 in this subdivision;

50 (B) Each shall have a minimum of ten years' experience
51 in his or her field of expertise. The governor shall consider
52 the following guidelines when determining whether
53 potential candidates meet the qualifications of this
54 subsection: Expertise in insurance claims management;
55 expertise in insurance underwriting; expertise in the
56 financial management of pensions or insurance plans;
57 expertise as a trustee of pension or trust funds of more

58 than two hundred beneficiaries or three hundred million
59 dollars; expertise in workers' compensation management;
60 expertise in loss prevention and rehabilitation; expertise
61 in occupational medicine demonstrated by licensure as a
62 medical doctor in West Virginia and experience, board
63 certification or university affiliation; or expertise in
64 similar areas of endeavor;

65 (C) At least one shall be a certified public accountant
66 with financial management or pension or insurance audit
67 expertise; at least one shall be an attorney with financial
68 management experience; one shall be an academician
69 holding an advanced degree from an accredited college or
70 university in business, finance, insurance or economics;
71 and one shall represent organized labor.

72 (D) The council shall appoint one member to serve as
73 chairperson. The chairperson shall serve for a one-year
74 term and may serve more than one consecutive term. The
75 council shall hold meetings at the request of the chairper-
76 son or at the request of at least three of the members of the
77 council, but no less frequently than once every three
78 months. The chairperson shall determine the date and
79 time of each meeting. Three members of the council
80 constitute a quorum for the conduct of the business of the
81 council. No vacancy in the membership of the council
82 shall impair the right of a quorum to exercise all the rights
83 and perform all the duties of the council. No action shall
84 be taken by the council except upon the affirmative vote
85 of three members of the council.

86 (3) (A) Each voting appointed member of the council
87 shall receive compensation of not more than three hundred
88 fifty dollars per day for each day during which he or she is
89 required to and does attend a meeting of the board.

90 (B) Each voting appointed member of the council is
91 entitled to be reimbursed for actual and necessary ex-
92 penses incurred for each day or portion thereof engaged in
93 the discharge of official duties in a manner consistent with

94 guidelines of the travel management office of the depart-
95 ment of administration.

96 (C) Each member of the council shall be provided
97 appropriate liability insurance, including, but not limited
98 to, errors and omissions coverage, without additional
99 premium, by the state board of risk and insurance man-
100 agement established pursuant to article twelve, chapter
101 twenty-nine of this code.

102 (c) The industrial council shall:

103 (1) In consultation with the insurance commissioner,
104 establish operating guidelines and policies designed to
105 ensure the effective administration of the workers' com-
106 pensation insurance market in West Virginia.

107 (2) Review and approve, reject or modify rules that are
108 proposed by the insurance commissioner for operation and
109 regulation of the workers' compensation insurance market
110 before the rules are filed with the secretary of state. The
111 rules adopted by the industrial council are not subject to
112 sections nine through sixteen, inclusive, article three,
113 chapter twenty-nine-a of this code. The industrial council
114 shall follow the remaining provisions of said chapter for
115 giving notice to the public of its actions and for holding
116 hearings and receiving public comments on the rules.

117 (3) In accordance with the laws and rules of West
118 Virginia, establish and monitor performance standards
119 and measurements to ensure the timeliness and accuracy
120 of activities performed under chapter twenty-three of this
121 code and applicable rules.

122 (4) Submit for approval by the Legislature, as an isolated
123 and clearly discernable component of the insurance
124 commissioner's budget, a budget for the sufficient admin-
125 istrative resources and funding requirements necessary for
126 their duties under this article.

127 (5) Perform all record and information gathering func-
128 tions necessary to carry out its duties under this code.

129 (6) Every two years, conduct an overview of the safety
130 initiatives currently being utilized or which could be
131 utilized in the workers' compensation insurance market
132 and report said finding to the joint committee on govern-
133 ment and finance. Each private carrier and self-insured
134 employer shall cooperate with the council in the perfor-
135 mance of its duties to evaluate insurer services provided to
136 employers in controlling losses and providing information
137 on the prevention of industrial accidents or occupational
138 diseases. Each employer, private carrier and self-insured
139 employer shall provide to the council, upon request, any
140 information, statistics or data in its records requested by
141 the council in the performance of these duties.

142 (7) Perform all other duties as specifically provided in
143 this chapter for the industrial council and those duties
144 incidental thereto.

145 (8) Establish a method of indexing claims of injured
146 workers that will make information concerning the injured
147 workers of one insurer available to other insurers.

148 (A) Every insurer shall provide information, as required
149 by the industrial council, for establishing and maintaining
150 the claims index.

151 (B) If an employee files a claim with an insurer, the
152 insurer is entitled to receive from the administrator a list
153 of the prior claims of the employee. If the insurer desires
154 to inspect the files related to the prior claims, he or she
155 must obtain the written consent of the employee or the
156 insurance commissioner or his or her designee. The use of
157 the information contained in the files is limited to the
158 administration of the claim.

**§23-2C-6. Creation of new fund, old fund, mutualization transi-
tion fund, uninsured employer fund, self-insured
employer guaranty risk pool, self-insured employer
security risk pool, private carrier guaranty fund,
and assigned risk fund.**

1 (a) Effective upon the date upon which this enactment is
2 made effective by the Legislature, there is hereby created
3 in the state treasury a "workers' compensation old fund",
4 "workers' compensation new fund", "mutualization
5 transition fund", "workers' compensation uninsured
6 employers' fund", "self-insured employer guaranty risk
7 pool", "self-insured employer security risk pool", "private
8 carrier guaranty fund" and an "assigned risk fund". The
9 executive director of the workers' compensation commis-
10 sion shall have full authority to administer the old fund,
11 the new fund, the mutualization transition fund, the
12 uninsured employers' fund, the self-insured employer
13 guaranty risk pool, the self-insured employer security risk
14 pool and the private carrier guaranty fund until termina-
15 tion of the commission. As soon as practicable upon the
16 establishment of the mutualization transition fund, the
17 executive director shall cause thirty-five million dollars to
18 be transferred from the workers' compensation fund into
19 the mutualization transition fund. All unencumbered
20 funds remaining in the mutualization transition fund as of
21 termination of the commission shall be transferred into the
22 private carrier guaranty fund or, if the proclamation set
23 forth in this article has not been issued, back to the work-
24 ers' compensation fund. Expenditures from the funds
25 established by this section shall be upon appropriation of
26 the Legislature except that during the fiscal year ending
27 the thirtieth day of June, two thousand five, expenditures
28 from the mutualization transition fund up to amounts
29 expended for the purposes of this article are authorized
30 rather than pursuant to an appropriation by the Legisla-
31 ture.

32 (b) If the proclamation set forth in this article is issued,
33 then upon termination of the commission, the funds
34 contained in the workers' compensation fund shall be
35 disbursed as follows: (1) A minimum of three hundred
36 million dollars into the workers' compensation old fund,
37 the exact amount of which shall be set forth in the gover-
38 nor's proclamation provided in this article; (2) five million

39 dollars into the uninsured employers' fund; and (3) the
40 remainder into the new fund. Additionally, the funds
41 contained in the guaranty pool provided in 85 CSR §19
42 (2004) shall be transferred into the self-insured employer
43 guaranty risk pool created in this article.

§23-2C-7. Custody, investment and disbursement of funds.

1 (a) The state treasurer shall be the custodian of the
2 workers' compensation old fund, workers' compensation
3 uninsured employers' fund, the self-insured employer
4 guaranty risk pool, the self-insured employer security risk
5 pool, the private carrier guaranty fund and the assigned
6 risk pool and moneys payable to each of these funds shall
7 be deposited in the state treasury to the credit of the funds.
8 Each fund shall be a separate and distinct fund upon the
9 books and records of the auditor and treasurer. Disburse-
10 ments from these funds shall be made upon requisitions
11 signed by the executive director and, effective upon
12 termination of the commission, the administrator of the
13 funds and the insurance commissioner. The workers'
14 compensation old fund, the workers' compensation
15 uninsured employer fund, the self-insured employer
16 guaranty risk pool, self-insured employer security risk
17 pool, the private carrier guaranty fund and the assigned
18 risk fund are participant plans as defined in section two,
19 article six, chapter twelve of this code and are subject to
20 the provisions of section nine-a of said article. The funds
21 may be invested by the investment management board in
22 accordance with said article.

23 (b) If the governor issues the proclamation set forth in
24 this article, then, effective upon termination of the com-
25 mission, all remaining assets and funds contained in the
26 workers' compensation fund which are payable to the new
27 fund shall be so disbursed and paid to the company by
28 communication of the executive director to the state
29 treasurer or other appropriate state official prior to the
30 termination of the commission.

§23-2C-8. West Virginia uninsured employers' fund.

1 (a) The West Virginia uninsured employers' fund shall be
2 governed by the following:

3 (1) All money and securities in the fund must be held by
4 the state treasurer as custodian thereof to be used solely as
5 provided in this article.

6 (2) The state treasurer may disburse money from the
7 fund only upon written requisition of the insurance
8 commissioner and administrator of the fund.

9 (3) The insurance commissioner shall assess each private
10 carrier and all self-insured employers an amount to be
11 deposited in the fund. The assessment may be collected by
12 each private carrier from its policy holders in the form of
13 a policy surcharge. To establish the amount of the assess-
14 ment, the insurance commissioner shall determine the
15 amount of money necessary to maintain an appropriate
16 balance in the fund for each fiscal year and shall allocate
17 a portion of that amount to be payable by private carriers,
18 a portion to be payable by self-insured employers, and a
19 portion to be paid by any other appropriate group. After
20 allocating the amounts payable, the insurance commis-
21 sioner shall apply an assessment rate to the:

22 (A) Private carriers that reflects the relative hazard of
23 the employments covered by the private carriers, results in
24 an equitable distribution of costs among the private
25 carriers and is based upon expected annual premiums to
26 be received;

27 (B) Self-insured employers that results in an equitable
28 distribution of costs among the self-insured employers and
29 is based upon expected annual expenditures for claims;
30 and

31 (C) Any other categories of payees that results in an
32 equitable distribution of costs among them and is based
33 upon expected annual expenditures for claims or premium
34 to be received.

35 (4) The workers' compensation board of managers may
36 adopt rules for the establishment and administration of
37 the assessment methodologies, rates, payments and any
38 penalties that the workers' compensation board of manag-
39 ers determines are necessary to carry out the provisions of
40 this section.

41 (b) Payments from the fund shall be governed by the
42 following:

43 (1) Except as otherwise provided in this subsection, an
44 injured worker of any employer required to be covered
45 under this chapter who has failed to obtain coverage may
46 receive compensation from the uninsured employers' fund
47 if:

48 (A) He or she meets all jurisdictional and entitlement
49 provisions of this chapter;

50 (B) He or she files a claim with the insurance commis-
51 sioner; and

52 (C) He or she makes an irrevocable assignment to the
53 insurance commissioner a right to be subrogated to the
54 rights of the injured employee.

55 (2) If the insurance commissioner receives a claim, it
56 shall immediately notify the employer of the claim. For
57 the purposes of this section, the employer has the burden
58 of proving that it provided mandatory workers' compensa-
59 tion insurance coverage for the employee or that it was not
60 required to maintain workers' compensation insurance for
61 the employee. If the employer meets this burden, benefits
62 shall not be paid from the fund.

63 (3) Any employer who has failed to provide mandatory
64 coverage required by the provisions of chapter twenty-
65 three of this code is liable for all payments made on its
66 behalf, including any benefits, administrative costs and
67 attorney's fees paid from the fund or incurred by the
68 insurance commissioner.

69 (4) The insurance commissioner:

70 (A) May recover from the employer the payments made
71 by it, any accrued interest and attorney fees and costs by
72 bringing a civil action in a court of competent jurisdiction.

73 (B) May enter into a contract with any person, including
74 the administrator of the uninsured employers' fund, to
75 assist in the collection of any liability of an uninsured
76 employer.

77 (C) In lieu of a civil action, may enter into an agreement
78 or settlement regarding the collection of any liability of an
79 uninsured employer.

80 (5) The insurance commissioner shall:

81 (A) Determine whether the employer was insured within
82 five days after receiving notice of the claim from the
83 employee.

84 (B) Assign the claim to the administrator of the fund for
85 administration and, if appropriate, payment of compensa-
86 tion.

87 (6) Upon determining whether the claim is accepted or
88 denied, the fund administrator shall notify the injured
89 employee and the named employer of its determination.

90 (7) Any party aggrieved by a determination made by the
91 insurance commissioner or the fund administrator regard-
92 ing the claims decisions made pursuant to this section may
93 appeal that determination by filing a protest with the
94 office of judges as set forth in article five of this chapter.

95 (8) An uninsured employer is liable for the interest on
96 any amount paid on his or her claims from the fund. The
97 interest must be calculated at a rate set in accordance with
98 the provisions of section thirteen, article two of this
99 chapter, compounded monthly, from the date the claim is
100 paid from the account until payment is received by the

101 insurance commissioner or fund administrator from the
102 employer.

103 (9) Attorney's fees recoverable by the insurance commis-
104 sioner or administrator pursuant to this section must be
105 paid at the usual and customary rate for that attorney.

106 (10) In addition to any other liabilities provided in this
107 section, the insurance commissioner or the fund adminis-
108 trator may impose an administrative fine of not more than
109 ten thousand dollars against an employer if the employer
110 fails to provide mandatory coverage required by this
111 chapter. All fines and other moneys collected pursuant to
112 this section shall be deposited into the uninsured employer
113 fund.

114 (c) The company shall be the administrator of the
115 uninsured employers' fund from the fund's inception and
116 thereafter for seven years and shall be charged with all
117 authority and responsibilities incidental to the administra-
118 tion of the fund which are necessary to accomplish the
119 express provisions and the intent of this chapter. The
120 company shall be paid a monthly administrative fee of five
121 percent of claims paid each month for the administration
122 of the fund through the thirty-first day of December, two
123 thousand ten, and four percent of claims paid each month
124 for the administration of the fund thereafter through the
125 thirty-first day of December, two thousand twelve. The
126 company's administrative duties shall include, but not be
127 limited to, receipt of all claims, processing said claims,
128 providing for the payment of said claims through the state
129 treasurer's office or other applicable state agency and
130 ensuring, through the selection and assignment of counsel,
131 that claims decisions are properly defended. The adminis-
132 tration of the fund after this seven year period shall be
133 subject to the procedures set forth in article three, chapter
134 five-a of this code.

135 (d) Employees of self-insured employers who are injured
136 while employed by a self-insured employer are ineligible
137 for benefits from the West Virginia uninsured employer
138 fund.

§23-2C-9. West Virginia private carrier guaranty fund.

1 (a) The private carrier guaranty fund established in
2 article two-c of this chapter shall provide benefits to those
3 employees whose employers' private carrier is found to be
4 insolvent by a court of competent jurisdiction in the
5 insurer's state of domicile or has otherwise defaulted on its
6 payment obligations and is subject to an administrative
7 action by the insurance commissioner.

8 (b) The private carrier guaranty fund shall be funded
9 through assessments on each private carrier of workers'
10 compensation insurance. All assessments shall be depos-
11 ited in the private carrier guaranty fund established in this
12 article. The assessment may be collected by each carrier
13 from its policy holders in the form of a policy surcharge.
14 To establish the amount of the assessment, the insurance
15 commissioner shall determine the amount of money
16 necessary to pay outstanding obligations of the defaulting
17 private carrier and to maintain an appropriate balance in
18 the fund for each fiscal year. The insurance commissioner
19 shall apply an assessment rate to the private carriers that
20 reflects the relative hazard of the employments covered by
21 the private carriers, results in an equitable distribution of
22 costs among the private carriers and is based upon ex-
23 pected annual premiums to be received.

24 (c) A defaulting private carrier shall not be permitted to
25 write any workers' compensation insurance in this state
26 until it has reimbursed the private carrier guaranty fund
27 for any payments made for the private carrier's unpaid
28 obligations.

29 (d) Private carriers providing workers' compensation
30 insurance shall not be subject to article twenty-six,
31 chapter thirty-three of this code for any premiums re-
32 ceived for coverage provided under this chapter.

33 (e) The insurance commissioner may promulgate rules to
34 implement the provisions of this section.

§23-2C-10. West Virginia adverse risk assignment.

1 (a) To qualify for adverse risk assignment, an employer
2 must have been categorically declined coverage by at least
3 two insurers that are not affiliated with each other. The
4 employer shall have the burden of establishing that at
5 least two insurers are unwilling to provide coverage at any
6 premium level that is reasonably related to the risk
7 presented by the employer.

8 (b) To qualify for adverse risk assignment, the employer
9 shall make an application to the insurance commissioner
10 and shall submit the evidence described in subsection (a)
11 of this section.

12 (c) Upon receipt of the adverse risk assignment applica-
13 tion, the insurance commissioner shall determine whether
14 subsection (a) of this section has been satisfied. If so, the
15 insurance commissioner shall, through the assigned risk
16 fund, provide coverage to the applicant at a premium level
17 to be determined by the insurance commissioner, which
18 premiums shall be consistent with generally accepted
19 accounting principles, actuarially sound, and consistent
20 with classification and rate-making methodologies found
21 in the insurance industry. All rates, surcharges or assess-
22 ments and assignment of adverse risk employers shall be
23 fair and equitable and financially sound in accordance
24 with generally accepted accounting principles.

25 (d) The coverage provided by this section shall be
26 pursuant to a pooling arrangement managed by the
27 insurance commissioner. The insurance commissioner may
28 contract with any third party, including any private
29 carrier, to administer this pooling arrangement. Costs
30 necessary to operate this pooling arrangement shall be
31 funded by premiums paid by covered employers, sur-
32 charges, if any, to covered employers and assessments to
33 private carriers providing workers' compensation insur-
34 ance in this state.

35 (c) The workers' compensation board of managers shall
36 promulgate a rule for the establishment of the pooling
37 mechanism and administration thereof; assessment of
38 private carriers; and rating structure with differing rate
39 tiers for insureds.

40 (f) As often as necessary, the insurance commissioner
41 may assess all private carriers providing workers' compen-
42 sation insurance in this state such funds as are necessary
43 to cover any deficiencies in the pooling arrangement. The
44 assessments shall result in an equitable distribution of
45 costs among private carriers based upon premiums re-
46 ceived by the private carriers. Assessments made upon
47 private carriers pursuant to this section may be collected
48 by each carrier from its policy holders in the form of a
49 surcharge.

**§23-2C-11. Transfer of assets from new fund to the mutual
insurance company established as a successor to
the commission; transfer of commission employ-
ees.**

1 (a) If the governor determines that:

2 (1) The old fund assets are sufficient to satisfy the old
3 fund liabilities or that a revenue source has been secured
4 to satisfy the old fund liabilities as they occur from time to
5 time;

6 (2) The executive director has established a mutual
7 insurance company pursuant to this code;

8 (3) The comprehensive financial plan has been accepted
9 by the insurance commissioner; and

10 (4) The commissioner of insurance has determined that
11 the mutual insurance company established by the execu-
12 tive director qualifies:

13 (A) For a certificate of authority to transact workers'
14 compensation insurance in this state; and

15 (B) For the authority to issue nonassessable policies of
16 insurance pursuant to this code, the governor shall issue a
17 proclamation stating that the events described in subdivi-
18 sions (1) through (4), inclusive, of this subsection have
19 occurred, along with the exact amount of funds to be
20 transferred from the workers' compensation fund to the
21 old fund. The Governor shall establish the effective date
22 of the termination of the commission in the proclamation.

23 (b) If the governor issues said proclamation:

24 The executive director shall cause the transfer to the
25 mutual insurance company established pursuant this code
26 the premiums and other money paid or payable, trans-
27 ferred or transferable from the workers' compensation
28 fund into the new fund, old fund, and any other applicable
29 fund. The investment management board, state treasurer
30 and any other agency or board shall fully cooperate in the
31 transfer of the new fund assets.

32 (c) Upon the issuance of the proclamation set forth in
33 subsection (a) of this section, all commission employees
34 assigned regulatory duties shall transfer, along with the
35 assets necessary to support the functions being performed,
36 from the commission to the insurance commissioner:
37 *Provided*, That the executive director shall, in consultation
38 with the insurance commissioner, have sole authority to
39 identify and select the employees that are employed by the
40 commission to be assigned and transferred to the insur-
41 ance commission. For purposes of this section, regulatory
42 duties shall include, but may not be limited to, self-
43 insurance, rating services, office of judges and board of
44 review.

45 (d) The division of personnel shall cooperate fully by
46 assisting in all personnel activities necessary to expedite
47 all changes for the commission and the insurance commis-
48 sioner. Due to the emergency currently existing at the
49 commission and the urgent need to develop fast, efficient
50 claims processing, management and administration, the

51 insurance commissioner is hereby granted authority to
52 reorganize internal functions and operations and to
53 delegate, assign, transfer, combine, establish, eliminate
54 and consolidate responsibilities and duties to and among
55 the positions transferred under the authority of this
56 subsection. These actions shall not be subject to the
57 grievance process. The provisions of this subsection are
58 not effective after the thirty-first day of December, two
59 thousand six.

**§23-2C-12. Certain personnel provisions governing employees
laid-off by the mutual during its initial year of
operation.**

1 (a) If a mutual insurance company is established pursu-
2 ant to this article, a person who:

3 (1) Is employed on the first day of January, two thousand
4 five, by the commission;

5 (2) Was employed by the commission upon its termina-
6 tion; and

7 (3) Is laid off by the company on or before the thirtieth
8 day of June, two thousand eight, is entitled to be placed on
9 an appropriate reemployment list maintained by the
10 department of personnel and to be allowed a preference on
11 that list. The department of personnel shall maintain such
12 an employee on the reemployment list indefinitely, or until
13 the employee has declined three offers of employment at a
14 paygrade substantially similar to that of his or her position
15 upon termination of the commission, or until he or she is
16 reemployed by the executive branch of state government,
17 whichever occurs earlier.

18 (b) The executive director may select former bureau of
19 employment program employees who are, upon the
20 termination of the commission, employees of the office of
21 information services and communication and who enter
22 into an employment contract with the company before the
23 first day of December, two thousand five, to become

24 employees of the company and said employees shall be
25 afforded the benefits of this section.

§23-2C-13. Certain retraining benefits to those employees laid-off by the mutual during its first year of operation.

1 If a domestic mutual insurance company is established
2 pursuant to this article, the chief executive officer of the
3 company shall enter into an agreement with the depart-
4 ment of personnel for the provision of services and train-
5 ing to an employee of the company who is laid off during
6 the first year of the company's operation and requires
7 additional training to obtain other gainful employment.
8 The department of personnel shall administer the program.
9 The fees required for those services and training shall be
10 in an amount established by the department or personnel,
11 must not exceed two million dollars, in the aggregate, and
12 shall be paid out of the mutualization transition fund. The
13 executive director may select former bureau of employ-
14 ment program employees who are, upon the termination of
15 the commission, employees of the office of information
16 services and communication and who enter into an em-
17 ployment contract with the company before the first day
18 of December, two thousand five, to become employees of
19 the company and said employees shall be afforded the
20 benefits of this section.

§23-2C-14. Certain benefits provided to commission employees.

1 (a) If a domestic mutual insurance company is created
2 pursuant to this article and becomes operational as a
3 private carrier, then the company shall pay the full
4 actuarial cost to purchase years of credit for not more than
5 five years of service under the state's public employee
6 retirement system to those individuals who retire upon
7 termination of the commission or who become employed
8 by the company upon termination of the commission. The
9 amount purchased per employee shall be calculated by
10 allowing six months of credit to be purchased for each

11 year of service with the commission or its predecessors,
12 including the bureau of employment programs, and shall
13 be paid out of the mutualization transition fund. If upon
14 said purchase, an employee does not vest in the public
15 employee retirement plan, the employee can receive his or
16 her contribution from the retirement plan and an amount
17 equal to the employer's contribution to be payable out of
18 the mutualization transition fund.

19 (b) The public employees' retirement system shall take
20 such action as is necessary to carry out the provisions of
21 subsection (a).

22 (c) All employees employed by the commission on the
23 thirty-first day of December, two thousand four, who are
24 employed by the company immediately upon termination
25 of the commission shall have the following options related
26 to their accrued sick leave: Freeze said accrued sick leave
27 at the balance that existed as of thirty-first day of Decem-
28 ber, two thousand four and use said sick leave at the time
29 of retirement to purchase insurance through the public
30 employee insurance agency. Any related charges shall be
31 paid from the old fund; have their accrued sick leave
32 irrevocably surrendered in exchange for one hour of pay
33 for each hour of accrued sick leave surrendered to be
34 payable from the mutualization transition fund.

35 (d) The executive director may select former bureau of
36 employment program employees who are, upon the
37 termination of the commission, employees of the office of
38 information services and communication and who enter
39 into an employment contract with the company before the
40 first day of December, two thousand five, to become
41 employees of the company and said employees shall be
42 afforded the benefits of this section.

§23-2C-15. Mandatory coverage; changing of coverage.

1 (a) Effective upon termination of the commission, all
2 subscriber policies with the commission shall novate to the

3 company and all employers otherwise shall purchase
4 workers' compensation insurance from the company,
5 unless permitted to self-insure their obligations. The
6 company shall assume responsibility for all new fund
7 obligations of the subscriber policies which novate to the
8 company or which are issued thereafter. Each subscriber
9 whose policy novates to the company shall also have its
10 advanced deposit credited to its account with the com-
11 pany. Employers purchasing workers' compensation
12 insurance from the company shall have the right to
13 designate a representative or agent to act on its behalf in
14 any and all matters relevant to coverage and claims as
15 administered by the company.

16 (b) Effective the first day of July, two thousand eight, an
17 employer may elect to: (1) Continue to purchase workers'
18 compensation insurance from the company; (2) purchase
19 workers' compensation insurance from another private
20 carrier licensed and otherwise authorized to transact
21 workers' compensation insurance in this state; or (3) self-
22 insure its obligations if it satisfies all requirements of this
23 code to so self-insure and is permitted to do so: *Provided*,
24 That all state and local governmental bodies, including,
25 but not limited to, all counties and municipalities and
26 their subdivisions and including all boards, colleges,
27 universities and schools, shall continue to purchase work-
28 ers' compensation insurance from the company through
29 the thirtieth day of June, two thousand twelve. The
30 company and other private carriers shall be permitted to
31 sell workers' compensation insurance through licensed
32 agents in the state. To the extent that a private carrier
33 markets workers' compensation insurance through a
34 licensed agent, it shall be subject to all applicable provi-
35 sions of chapter thirty-three of the code. All employers'
36 must immediately notify the insurance commissioner of
37 its private carrier and any change thereto.

38 (c) An employer may elect to change its private insurer
39 carrier on or after the first day of July, two thousand eight,
40 if the employer has:

41 (1) Given at least thirty days' notice to the insurance
42 commissioner of the change of insurer; and

43 (2) Furnished evidence satisfactory to the insurance
44 commissioner that the payment of compensation has
45 otherwise been secured.

46 (d) Each private carrier and employer shall notify the
47 insurance commissioner if an employer has changed his or
48 her insurer or has allowed his or her insurance to lapse
49 within twenty-four hours or by the end of the next work-
50 ing day, whichever is later, after the insurer has notice of
51 the change or lapse. Every employer shall post a notice
52 upon its premises in a conspicuous place identifying its
53 industrial insurer. The notice must include the insurer's
54 name, business address and telephone number and the
55 name, business address and telephone number of its
56 nearest adjuster in this state. The employer shall at all
57 times maintain the notice provided for the information of
58 his or her employees. Release of employer policy informa-
59 tion and status by the industrial council and the insurance
60 commissioner shall be governed by section four, article
61 one, chapter twenty-three of this code. The insurance
62 commissioner shall collect and maintain information
63 related to officers, directors and ten percent or more
64 owners of each carrier's policy holders. The private carrier
65 shall provide said information to the insurance commis-
66 sioner.

67 (e) Any rule promulgated by the workers' compensation
68 board of managers empowering agencies of this state to
69 revoke or refuse to grant, issue or renew any contract,
70 license, permit, certificate or other authority to conduct a
71 trade, profession or business to or with any employer
72 whose account is in default with the commission shall be
73 fully enforceable by the insurance commissioner against
74 the employer in policy default with a private carrier.

75 (f) Effective the first day of July, two thousand eight, the
76 company may decline to offer coverage to any applicant.

77 Effective the first day of July, two thousand eight, the
78 company and private carriers may cancel a policy or
79 decline to renew a policy upon the issuance of sixty days
80 written advance notice to the policyholder: *Provided*, That
81 cancellation of the policy by the carrier for failure of
82 consideration to be paid by the policyholder is effective
83 after fifteen days advance written notice of cancellation to
84 the policyholder.

§23-2C-16. Administration of old fund.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the company shall be the administrator of the
3 workers' compensation old fund from inception of the
4 company and thereafter for seven years and shall be
5 charged with all authority and responsibilities incidental
6 to the administration of the old fund which are necessary
7 to accomplish the express provisions and the intent of this
8 chapter. The company shall be paid a monthly adminis-
9 trative fee of five percent of claims paid each month for
10 the administration of the old fund through the thirty-first
11 day of December, two thousand ten, and four percent of
12 claims paid each month for the administration of the old
13 fund thereafter through the thirty-first day of December,
14 two thousand twelve. The company's administrative
15 duties shall include, but not be limited to, receipt of all
16 claims, processing said claims, providing for the payment
17 of said claims through the state treasurer's office or other
18 applicable state agency, and ensuring, through the selec-
19 tion and assignment of counsel, that claims decisions are
20 properly defended. The administration of the old fund
21 after this seven-year period shall be subject to the proce-
22 dures set forth in article three, chapter five-a of this code.

23 (b) The insurance commissioner may contract or employ
24 counsel to perform legal services related solely to the
25 collection of moneys due the old fund, including the
26 collection of moneys due the old fund and enforcement of
27 repayment agreements entered into for the collection of
28 moneys due on or before the thirtieth day of June, two

29 thousand five, in any administrative proceeding and in any
30 state or federal court.

31 (c) The insurance commissioner shall review claims
32 determined to be payable from the old fund and may
33 contest the determination pursuant to the provisions of
34 article five of this chapter.

35 (d) The insurance commissioner may conduct or cause to
36 be conducted an annual audit to be performed on the old
37 fund.

§23-2C-17. Administration of a competitive system.

1 (a) Every policy of insurance issued by a private carrier:

2 (1) Shall be in writing;

3 (2) Shall contain the insuring agreements and exclusions;
4 and

5 (3) If it contains a provision inconsistent with this
6 chapter, it shall be deemed to be reformed to conform with
7 this chapter.

8 (b) The workers' compensation board of managers shall
9 promulgate a rule which prescribes the requirements of a
10 basic policy to be used by private carriers.

11 (c) A private carrier may enter into a contract to have his
12 or her plan of insurance administered by a third-party
13 administrator, including the company. A private carrier
14 shall not enter into a contract with any person for the
15 administration of any part of the plan of insurance unless
16 that person maintains an office in this state and has
17 registered with the insurance commissioner of this state in
18 accordance with article forty-six, chapter thirty-three of
19 the code.

20 (d) A self-insured employer or a private carrier may:

21 (1) Enter into a contract or contracts with one or more
22 organizations for managed care to provide comprehensive

23 medical and health care services to employees for injuries
24 and diseases that are compensable pursuant to chapter
25 twenty-three of this code. The managed care plan must be
26 approved pursuant to the provisions of section three,
27 article four of this chapter.

28 (2) Require employees to obtain medical and health care
29 services for their industrial injuries from those organiza-
30 tions and persons with whom the self-insured employer, or
31 private carrier has contracted or as the self-insured
32 employer or private carrier otherwise prescribes.

33 (3) Except for emergency care, require employees to
34 obtain the approval of the self-insured employer or private
35 carrier before obtaining medical and health care services
36 for their industrial injuries from a provider of health care
37 who has not been previously approved by the self-insured
38 employer or private carrier.

39 (e) A private carrier or self-insured employer may
40 inquire about and request medical records of an injured
41 employee that concern a preexisting medical condition
42 that is reasonably related to the industrial injury of that
43 injured employee.

44 (f) An injured employee must sign all medical releases
45 necessary for the insurer of his or her employer to obtain
46 information and records about a preexisting medical
47 condition that is reasonably related to the industrial injury
48 of the employee and that will assist the insurer to deter-
49 mine the nature and amount of workers' compensation to
50 which the employee is entitled.

§23-2C-18. Ratemaking; insurance commissioner.

1 (a) For the fiscal year beginning the first day of July, two
2 thousand six, the company shall charge the actuarially
3 determined base rates for the fiscal year. The base rates
4 shall be calculated by the company and submitted for
5 approval by the insurance commissioner.

6 (b) For the fiscal year beginning the first day of July, two
7 thousand seven, the company shall charge the actuarially
8 determined base rates for said fiscal year. The base rates
9 shall be calculated by the company and submitted for
10 approval by the insurance commissioner.

11 (c) Effective for the fiscal year beginning the first day of
12 July, two thousand eight, all private carriers' rates shall be
13 governed by the following:

14 (1) For the period beginning on first day of July, two
15 thousand eight, and ending on the thirtieth day of June,
16 two thousand nine, no more than five percent variance
17 from the base rates established by the insurance commis-
18 sioner.

19 (2) For the period beginning on the first day of July, two
20 thousand nine, and ending on the thirtieth day of June,
21 two thousand ten, no more than ten percent variance from
22 the base rates established by the insurance commissioner.

23 (d) For the period beginning on the first day of July, two
24 thousand six through the thirtieth day of June, two
25 thousand ten, the company and, when applicable, a private
26 carrier, may continue to calculate experience modification
27 factors and other related rating modification methodolo-
28 gies to adequately insure individual employer risks.

29 (e) The variances provided in this section are only
30 applicable to base rates and shall be exclusive of experi-
31 ence modification and other related adjustments, including
32 surcharges imposed by this chapter.

33 (f) For the period beginning the first day of July, two
34 thousand ten, and thereafter, the insurance commissioner
35 shall set base rates for approved classifications and
36 thereafter in accordance with rules established in accor-
37 dance with subsection nine of this section. Said rates shall
38 be released to the public at least ninety days prior to the
39 first day of July each year. Within thirty days from this
40 release date, private carriers shall submit to the insurance

41 commissioner their proposed rates, which may be higher
42 than the base rates established by the insurance commis-
43 sioner. The insurance commissioner retains authority to
44 disapprove rates in effect if it is determined that the rates
45 are not in compliance with the following:

46 (1) Rates must not be excessive, inadequate or unfairly
47 discriminatory, nor may an insurer charge any rate which
48 if continued will have or tend to have the effect of destroy-
49 ing competition or creating a monopoly.

50 (2) The insurance commissioner may disapprove rates if
51 there is not a reasonable degree of price competition at the
52 consumer level with respect to the class of business to
53 which they apply. In determining whether a reasonable
54 degree of price competition exists, the insurance commis-
55 sioner shall consider all relevant tests, including:

56 (A) The number of insurers actively engaged in the class
57 of business and their shares of the market;

58 (B) The existence of differentials in rates in that class of
59 business;

60 (C) Whether long-run profitability for private carriers
61 generally of the class of business is unreasonably high in
62 relation to its risk;

63 (D) Consumers' knowledge in regard to the market in
64 question; and

65 (E) Whether price competition is a result of the market
66 or is artificial. If competition does not exist, rates are
67 excessive if they are likely to produce a long-run profit
68 that is unreasonably high in relation to the risk of the class
69 of business, or if expenses are unreasonably high in
70 relation to the services rendered.

71 (3) Rates are inadequate if they are clearly insufficient,
72 together with the income from investments attributable to
73 them, to sustain projected losses and expenses in the class
74 of business to which they apply.

75 (4) One rate is unfairly discriminatory in relation to
76 another in the same class if it clearly fails to reflect
77 equitably the differences in expected losses and expenses.
78 Rates are not unfairly discriminatory because different
79 premiums result for policyholders with similar exposure to
80 loss but different expense factors, or similar expense
81 factors but different exposure to loss, so long as the rates
82 reflect the differences with reasonable accuracy. Rates are
83 not unfairly discriminatory if they are averaged broadly
84 among persons insured under a group, franchise or blanket
85 policy.

86 (g) The rate-making provisions and premium provisions
87 contained in article two of this chapter shall not be
88 applicable to the company or other private carriers. The
89 workers' compensation board of managers, in consultation
90 with the insurance commissioner, shall issue an exempt
91 legislative rule to govern ratemaking and premium
92 collection by the company and other private carriers.

§23-2C-19. Special provisions as to private carrier premium collection.

1 (a) Each employer who is required to purchase and
2 maintain workers' compensation insurance or who elects
3 to purchase workers' compensation insurance shall pay a
4 premium to a private carrier. Each carrier shall notify its
5 policy holders of the mandated premium payment method-
6 ology and under what circumstances a policy holder will
7 be found to be in policy default.

8 (b) An employer who is required to purchase and
9 maintain workers' compensation insurance but fails to do
10 so or otherwise enters policy default shall be deprived of
11 the benefits and protection afforded by this chapter,
12 including section six, article two of this chapter, and the
13 employer is liable as provided in section eight of said
14 article. The policy defaulted employer's liability under
15 these sections is retroactive to day the policy default
16 occurs. The private carrier shall notify the policy de-

17 faulted employer of the method by which the employer
18 may be reinstated with the private carrier.

19 (c) A private carrier is authorized to commence a civil
20 action against an employer who, after due notice, defaults
21 on any payment. If judgment is against the employer, the
22 employer shall pay the costs of the action. Upon prevail-
23 ing in a civil action, the private carrier is entitled to
24 recover its attorneys' fees and costs of action from the
25 employer.

26 (d) In addition to the provisions of subsection (a) of this
27 section, any payment, interest and penalty due and unpaid
28 under this chapter is a personal obligation of the employer,
29 its officers and its directors, immediately due and owing to
30 the private carrier and shall, in addition, be a lien enforce-
31 able against all the property of the employer: *Provided,*
32 That the lien shall not be enforceable as against a pur-
33 chaser (including a lien creditor) of real estate or personal
34 property for a valuable consideration without notice,
35 unless docketed as provided in section one, article ten-c,
36 chapter thirty-eight of this code: *Provided, however,* That
37 the lien may be enforced as other judgment liens are
38 enforced through the provisions of said chapter and the
39 same is considered deemed by the circuit court to be a
40 judgment lien for this purpose.

41 (e) The secretary of state of this state shall withhold the
42 issuance of any certificate of dissolution or withdrawal in
43 the case of any corporation organized under the laws of
44 this state or organized under the laws of any other state
45 and admitted to do business in this state, until notified by
46 its private carrier that all payments, interest and penalties
47 thereon against the corporation which is an employer
48 under this chapter have been paid or that provision
49 satisfactory to the private carrier has been made for
50 payment.

51 (f) In addition to any other liabilities provided in this
52 section, the insurance commissioner may impose an

53 administrative fine of not more than ten thousand dollars
54 against an employer if the employer fails to provide
55 mandatory coverage required by the this chapter. Further,
56 prior to providing an applicant employer with coverage
57 mandated in this chapter, all private carriers shall exercise
58 reasonable due diligence to ensure that an employer
59 applicant has not been in policy default with another
60 carrier or in default with the commission. If it is discov-
61 ered that the employer applicant remains in policy default
62 with another carrier or the commission, the company or
63 new carrier shall not provide the coverage mandated by
64 this chapter until such time as the preexisting policy
65 default is cured. Any provider violating this provision
66 may be fined not more than ten thousand dollars by the
67 insurance commissioner.

68 (g) The company and the insurance commissioner shall
69 be provided extraordinary powers to collect any premium
70 amounts payable to the workers' compensation fund or the
71 new fund and due from first day of July, two thousand
72 five, through the thirtieth day of June, two thousand eight.
73 Those powers shall include: (1) Withholding of coverage
74 effective the first day of January, two thousand six.
75 Employers without coverage shall immediately be de-
76 prived of the benefits and protection afforded by this
77 chapter, including section six, article two of this chapter
78 and the employer is liable as provided in section eight of
79 said article; (2) the right to maintain a civil action against
80 all officers and directors of the employer individually for
81 collection of the premium owed; and (3) the right to
82 immediately report the employers' to the state tax depart-
83 ment and other state agencies to secure suspension of any
84 and all licenses, certificates, permits, registrations and
85 other similar approval documents necessary for the
86 employer to conduct business in this state.

§23-2C-20. Claims administration issues.

- 1 (a) A self-insured employer shall continue to comply
- 2 with rules promulgated by the board of managers govern-

3 ing the self-administration of its claims and the successor
4 to the commission shall also comply with the rules promul-
5 gated by the board of managers governing the self-admin-
6 istration of claims.

7 (b) The successor to the commission, any other private
8 carrier and any employer that self-insures its risk and self-
9 administers its claims shall exercise all authority and
10 responsibility granted to the commission in this chapter
11 and provide notices of action taken to effect the purposes
12 of this chapter to provide benefits to persons who have
13 suffered injuries or diseases covered by this chapter. The
14 successor to the commission, private carriers and self-
15 insured employers shall at all times be bound and shall
16 comply fully with all of the provisions of this chapter.
17 Furthermore, all of the provisions contained in article four
18 of this chapter pertaining to disability and death benefits
19 are binding on and shall be strictly adhered to by the
20 successor to the commission, private carriers, and the self-
21 insured employer in their administration of claims pre-
22 sented by employees of the self-insured employer.

23 (c) Upon termination of the commission, the occupa-
24 tional pneumoconiosis board shall be transferred to the
25 insurance commissioner and shall be administered by the
26 insurance commissioner. The company and other private
27 carriers shall have all authority and responsibility granted
28 to the self-insured employers in the administration and
29 processing of occupational pneumoconiosis claims.

30 (d) Upon termination of the commission, all claims
31 allocation responsibilities shall transfer from the commis-
32 sion to the insurance commissioner.

33 (e) Upon termination of the commission, the administra-
34 tor of the old fund shall have all administrative and
35 adjudicatory authority vested in the commission in
36 administering old law liabilities and otherwise processing
37 and deciding old law claims.

§23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.

1 (a) No cause of action may be brought or maintained by
2 an employee against a private carrier or a third-party
3 administrator, or any employee or agent of a private
4 carrier or third-party administrator, who violates any
5 provision of this chapter or chapter thirty-three of this
6 code.

7 (b) Any administrative fines or remedies provided in this
8 chapter or rules promulgated by the workers' compensa-
9 tion commission or the insurance commissioner are the
10 exclusive civil remedies for any violation of this chapter
11 committed by a private carrier or a third-party adminis-
12 trator or any agent or employee of a private carrier or a
13 third-party administrator.

14 (c) Upon a determination by the Office of Judges' that a
15 denial of compensability, a denial of an initial award of
16 temporary total disability or a denial of an authorization
17 for medical benefits was unreasonable, reasonable attor-
18 ney's fees and the costs actually incurred in the process of
19 obtaining a reversal of the denial shall be awarded to the
20 claimant and paid by the company, private carrier or self-
21 insured employer which issued the unreasonable denial.
22 A denial is unreasonable if, after submission by or on
23 behalf of the claimant, of evidence of the compensability
24 of the claim, the entitlement to initial temporary total
25 disability benefits or medical benefits, the company,
26 private carrier or self-insured employer is unable to
27 demonstrate that it had evidence or a legal basis supported
28 by legal authority at the time of the denial which is
29 relevant and probative and supports the denial of the
30 award or authorization. Payment of attorney's fees and
31 costs awarded under this subsection will be made to the
32 claimant at the conclusion of litigation, including all
33 appeals, of the claimant's protest of the denial.

§23-2C-22. Rules.

1 Except as otherwise provided in this chapter, all rules
2 applicable to the former workers' compensation commis-
3 sion are hereby adopted and made effective as to the
4 operation of the workers' compensation insurance market
5 to the extent that they are not in conflict with the current
6 law. Authority to enforce the existing rules and the
7 regulatory functions of the commission as set forth in
8 chapter twenty-three of the code shall transfer from the
9 commission to the insurance commissioner effective upon
10 termination of the commission.

§23-2C-23. Transfer of assets and contracts.

1 With the establishment of the company, all commission
2 assets, excluding those necessary to perform the regulatory
3 function of the insurance commissioner under this chapter
4 are hereby transferred and assigned to the company.

ARTICLE 2D. WORKERS' COMPENSATION DEBT REDUCTION BONDS.**§23-2D-1. Short title.**

1 This article shall be known and may be cited as the
2 "Workers' Compensation Debt Reduction Bond Act".

§23-2D-2. Legislative findings; legislative intent.

1 The Legislature finds and declares that:

2 (a) The supreme court of appeals has ruled that article X,
3 section four of the constitution does not preclude issuance
4 of revenue bonds which are to be redeemed from a special
5 fund.

6 (b) The supreme court of appeals has also ruled that the
7 Legislature may not designate funds that will be used to
8 liquidate a bond issue out of a current tax source that
9 flows into the general revenue fund.

10 (c) This act imposes several new taxes and provides for
11 those taxes to be deposited in the workers' compensation

12 debt reduction fund created in section five of this article,
13 which is a special account in the treasury and is not part
14 of the state general revenue fund.

15 (d) This act also provides for certain special revenue
16 dollars that are not part of the state general revenue fund
17 to also be deposited in the workers' compensation debt
18 reduction fund.

19 (e) This article provides for the reduction of the old fund
20 liability of the workers' compensation commission through
21 the issuance of revenue bonds for the purpose of:

22 (1) Providing for the safety and soundness of the work
23 ers' compensation system; and

24 (2) Redeeming the unfunded liability of the workers'
25 compensation fund in order to realize savings over the
26 remaining term of the amortization schedules of the
27 unfunded actuarial accrued liabilities.

28 (f) The general credit of the state will not be pledged for
29 repayment of bonds issued under this article and repay-
30 ment will come from moneys that are not part of the
31 state's general revenue fund.

§23-2D-3. Definitions.

1 For purposes of this article:

2 (a) "Old fund" means the fund created in sections two
3 and six, article two-c of this chapter;

4 (b) "Workers' compensation commission" or "commis-
5 sion" means the West Virginia workers' compensation
6 commission established under article one, chapter twenty-
7 three of this code, or any successor to all or any substantial
8 part of its powers and duties; and

9 (c) "Workers' compensation debt reduction revenue
10 bond" means any bond or bonds issued by the economic
11 development authority pursuant to this article.

§23-2D-4. Workers' compensation debt reduction revenue bonds; amount; when may issue.

1 (a) Revenue bonds of the state of West Virginia are
2 hereby authorized to be issued and sold by the West
3 Virginia economic development authority created and
4 provided in article fifteen, chapter thirty-one of this code,
5 solely for the paying down and elimination of the current
6 unfunded liability of the workers' compensation fund, as
7 provided by the constitution and the provisions of this
8 article. The principal of, and the interest and redemption
9 premium, if any, on, the bonds shall be payable solely from
10 the special fund provided in section six of this article for
11 repayment.

12 (b) The bonds shall bear such date or dates and mature
13 at such time or times, be in such amounts, be in such
14 denominations, be in such registered form, carry such
15 registration privileges, be due and payable at such time or
16 times, not exceeding thirty years from their respective
17 dates, and place and in such amounts, and subject to such
18 terms of redemption as the resolution may provide:
19 *Provided*, That in no event may the amount of bonds
20 issued pursuant to this article exceed one billion five
21 hundred million dollars.

22 (c) Revenue bonds issued under this article shall state on
23 their face that the bonds do not constitute a debt of the
24 state of West Virginia; that payment of the bonds, interest
25 and charges thereon cannot become an obligation of the
26 state of West Virginia; and that the bondholders' remedies
27 are limited in all respects to the "special revenue fund"
28 established in this article for the liquidation of the bonds.

29 (d) Net proceeds from sale of these bonds shall be
30 deposited in the old fund.

§23-2D-5. Special account created; use of moneys in the fund.

1 (a) There is hereby created in the state treasury a special
2 interest bearing account known as the "workers' compen-

3 sation debt reduction fund." Funds in this account may be
4 invested in the manner permitted by the provisions of
5 article six, chapter twelve of this code, with interest
6 income a proper credit to this fund.

7 (b) Moneys to be deposited in this account include:

8 (1) The amounts provided in section two, article eleven-
9 a, chapter four of this code;

10 (2) The net amount of all moneys received by the tax
11 commissioner from collection of the new taxes imposed by
12 section four, article thirteen-v, chapter eleven of this code,
13 including any interest, additions to tax, or penalties
14 collected with respect to these taxes pursuant to article
15 ten, chapter eleven of this code;

16 (3) The net amount of moneys received by the insurance
17 commissioner from collection of the new premiums tax
18 imposed by section three, article two-c of this chapter; and

19 (4) Moneys from racetrack video lottery net terminal
20 income, as provided in section ten and ten-b, article
21 twenty-two-a, chapter twenty-nine of this code.

22 (c) Moneys in this account are to be used and expended
23 to reduce the workers' compensation debt or to pay debt
24 service on bonds sold pursuant to this article for the
25 purpose of reducing or paying the workers' compensation
26 debt, or for any combination of both of these purposes.

27 (d) From the moneys deposited in this fund, there shall
28 first be transferred each month to the debt service fund
29 created in section six of this article sufficient amounts to
30 provide for the timely payment of the principal, interest
31 and redemption premium, if any, on any revenue bonds or
32 refunding bonds issued pursuant to this article, as deter-
33 mined in the trust agreement or agreements. Remaining
34 moneys shall be transferred monthly to the old fund.

§23-2D-5a. Excess regular coal severance taxes.

1 When in any fiscal year ending after the thirtieth day of
2 June, two thousand six, the state collects net severance tax
3 on the privilege of severing, extracting, reducing to
4 possession or producing coal for sale profit or commercial
5 use imposed by section three, article thirteen-a, chapter
6 eleven of the code, that is in excess of the net amount of
7 the tax collected in fiscal year two thousand six, fifty
8 percent of the difference shall be deposited in the old fund
9 created in article two-c of this chapter. For purposes of
10 this subsection, the amount of the additional severance tax
11 on coal imposed pursuant to section six, article thirteen-a,
12 chapter eleven of the code, collected each fiscal year for
13 the benefit of counties and municipalities as provided in
14 said section six, shall be excluded when determining the
15 amount of the tax imposed by section three, article
16 thirteen-a, chapter eleven of the code, that is collected
17 each fiscal year from the privilege of severing, extracting,
18 reducing to possession or producing coal for sale, profit or
19 commercial use. The provisions of this subsection shall
20 not be effective after the thirtieth day of June, two thou-
21 sand nine.

**§23-2D-6. Creation of debt service fund; disbursements to pay
debt service on workers' compensation debt
reduction revenue bonds.**

1 (a) There is hereby created a special account in the state
2 treasury, which shall be designated and known as the
3 "West Virginia Workers' Compensation Debt Reduction
4 Revenue Bond Debt Service Fund", into which shall
5 monthly be deposited amounts from the workers' compen-
6 sation debt reduction fund necessary to pay debt service
7 on the bonds and to provide for any coverage require-
8 ments.

9 (b) All amounts deposited in the fund shall be pledged to
10 the repayment of the principal, interest and redemption
11 premium, if any, on any revenue bonds or refunding
12 revenue bonds authorized by this article, including any
13 and all commercially customary and reasonable costs and

14 expenses which may be incurred in connection with the
15 issuance, refunding, redemption or defeasance thereof.

16 (c) The treasurer shall transfer monies in this fund as set
17 forth in the trust agreement for the bonds issued under
18 this article.

19 (d) A lien on the proceeds of the West Virginia workers'
20 compensation debt reduction revenue bond debt service
21 fund up to a maximum amount equal to the projected
22 annual principal, interest and coverage ratio requirements
23 may be granted by the economic development authority in
24 favor of the bonds it issues secured by this fund.

§23-2D-7. Covenants of state.

1 The state of West Virginia covenants and agrees with the
2 holders of the bonds issued pursuant hereto as follows: (1)
3 That such bonds shall never constitute a direct and general
4 obligation of the state of West Virginia; (2) that the full
5 faith and credit of the state is not hereby pledged to secure
6 the payment of the principal and interest of such bonds; (3)
7 that new annual state taxes that are not and never were
8 part of the state general revenue fund shall be collected in
9 an amount sufficient to pay as it may accrue the interest
10 on such bonds and the principal thereof; and (4) that the
11 moneys transferred to the workers' compensation debt
12 reduction revenue bond debt service fund as provided in
13 this article are irrevocably set aside and dedicated to the
14 payment of the interest on and principal of any bond
15 becoming due and payable in such year.

**§23-2D-8. Workers' compensation debt reduction revenue bonds
lawful investments.**

1 All workers' compensation debt reduction revenue bonds
2 issued pursuant to this article shall be lawful investments
3 for banking institutions, societies for savings, building and
4 loan associations, savings and loan associations, deposit
5 guarantee associations, trust companies, insurance compa-

6 nies, including domestic for life and domestic not for life
7 insurance companies.

§23-2D-9. Refunding bonds.

1 Any workers' compensation debt reduction revenue
2 bonds which are outstanding may at any time be refunded
3 by the issuance of refunding bonds in an amount deemed
4 necessary to refund the principal of the bonds to be
5 refunded, together with any unpaid interest thereon; to
6 accomplish the purpose of this article; and to pay any
7 premiums and commissions necessary to be paid in
8 connection therewith. Any refunding may be effected
9 whether the workers' compensation debt reduction
10 revenue bonds to be refunded shall have then matured or
11 shall thereafter mature. Any refunding bonds issued
12 pursuant to this article shall be payable from the workers'
13 compensation debt reduction revenue bond debt service
14 fund shall be secured in accordance with the provisions of
15 this article.

§23-2D-10. Approval and payment of all necessary expenses.

1 All necessary expenses, including legal expenses, in-
2 curred in the issuance of any revenue bonds pursuant to
3 this article shall be paid out of bond proceeds.

ARTICLE 3. WORKERS' COMPENSATION FUND.

**§23-3-1. Compensation fund; catastrophe and catastrophe
payment defined; compensation by employers.**

1 (a) The commission shall establish a workers' compensa-
2 tion fund from the premiums and other funds paid thereto
3 by employers, as provided in this section, for the benefit of
4 employees of employers who have paid the premiums
5 applicable to the employers and have otherwise complied
6 fully with the provisions of section five, article two of this
7 chapter, and for the benefit, to the extent elsewhere in this
8 chapter set out, of employees of employers who have
9 elected, under section nine, article two of this chapter, to

10 make payments into the workers' compensation fund as
11 provided for in this section, and for the benefit of the
12 dependents of all the employees, and for the payment of
13 the administration expenses of this chapter. The workers'
14 compensation fund created pursuant to this article shall
15 terminate upon termination of the commission and its
16 proceeds shall be distributed as set forth in article two-c
17 of this chapter.

18 (b) A portion of all premiums that are paid into the
19 workers' compensation fund by subscribers not electing to
20 carry their own risk under section nine, article two of this
21 chapter that is set aside to create and maintain a reserve
22 of the fund to cover the catastrophe hazard and all losses
23 not otherwise specifically provided for in this chapter.
24 The percentage to be set aside is determined pursuant to
25 the rules adopted to implement section four, article two of
26 this chapter and shall be in an amount sufficient to
27 maintain a solvent fund. All interest earned on invest-
28 ments by the workers' compensation fund, which is
29 attributable to the reserve, shall be credited to the fund.
30 Effective upon termination of the commission, all funds in
31 the catastrophe fund shall be transferred into the old fund,
32 all claims payable as a consequence of a catastrophe
33 hazard shall be payable from the old fund and any premi-
34 ums due under this article shall be payable to the old fund.
35 Employers shall purchase catastrophe insurance from the
36 company or another private carrier and shall also reinsure
37 their catastrophic risk.

38 (c) A catastrophe is hereby defined as an accident in
39 which three or more employees are killed or receive
40 injuries which, in the case of each individual, consist of:
41 Loss of both eyes or the sight thereof; loss of both hands or
42 the use thereof; loss of both feet or the use thereof; or loss
43 of one hand and one foot or the use thereof. The aggregate
44 of all medical and hospital bills and other costs and all
45 benefits payable on account of a catastrophe is defined as
46 "catastrophe payment". In case of a catastrophe to the

47 employees of an employer who is an ordinary premium-
48 paying subscriber to the fund, or to the employees of an
49 employer who, having elected to carry the employer's own
50 risk under section nine, article two of this chapter, has
51 previously elected, or may later elect, to pay into the
52 catastrophe reserve of the fund under the provisions of
53 said section, the catastrophe payment arising from the
54 catastrophe shall not be charged against, or paid by, the
55 employer but shall be paid from the catastrophe reserve of
56 the fund.

57 (d) For all awards made on or after the effective date of
58 the amendments to this section enacted during the year
59 two thousand three, the following provisions relating to
60 second injury are not applicable. For awards made before
61 the date specified in this subsection, if an employee who
62 has a definitely ascertainable physical impairment, caused
63 by a previous occupational injury, occupational pneumo-
64 coniosis or occupational disease, irrespective of its com-
65 pensability, becomes permanently and totally disabled
66 through the combined effect of the previous injury and a
67 second injury received in the course of and as a result of
68 his or her employment, the employer shall be chargeable
69 only for the compensation payable for the second injury:
70 *Provided*, That in addition to the compensation, and after
71 the completion of the payments therefor, the employee
72 shall be paid the remainder of the compensation that
73 would be due for permanent total disability out of the
74 workers' compensation fund. The procedure by which the
75 claimant's request for a permanent total disability award
76 under this section is ruled upon shall require that the issue
77 of the claimant's degree of permanent disability first be
78 determined. Thereafter, by means of a separate order, a
79 decision shall be made as to whether the award is a second
80 injury award under this subsection or a permanent total
81 disability award to be charged to the employer's account
82 or to be paid directly by the employer if the employer has
83 elected to be self-insured employer under the provisions of
84 section nine, article two of this chapter.

85 (e) Employers electing, as provided in this chapter, to
86 compensate individually and directly their injured em-
87 ployees and their fatally injured employees' dependents
88 shall do so in the manner prescribed by the commission
89 and shall make all reports and execute all blanks, forms
90 and papers as directed by the commission, and as provided
91 in this chapter.

**§23-3-4. Deposits and disbursements considered abandoned
property; disposition of property.**

1 (a) All disbursements from the workers' compensation
2 fund and the other funds created pursuant to this chapter
3 including the advance deposits by employers where there
4 has been no activity for a period of five years, are pre-
5 sumed abandoned and subject to the custody of the state
6 as unclaimed property under the provisions of article
7 eight, chapter thirty-six of this code. The funds shall be
8 kept in a separate account by the state treasurer, apart
9 from other unclaimed property funds. Ninety days after
10 the state treasurer has advertised the accounts and paid
11 any claims, he or she shall remit the balance of those funds
12 held in the account to the credit of the workers' compensa-
13 tion fund or to other affected funds. Such property shall
14 become the property of, and owned exclusively by, the
15 workers' compensation fund. Effective upon termination
16 of the commission, said funds otherwise meeting the
17 requirements of this section shall be deposited into the old
18 fund as set forth in article two-c of this chapter.

19 (b) Notwithstanding any provision of law to the con-
20 trary, all interest and other earnings accruing to the
21 investments and deposits of the workers' compensation
22 fund and of the other funds created pursuant to this
23 chapter are credited only to the account of the workers'
24 compensation fund or to such other affected fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1b. Report of injuries by employers.

1 It is the duty of every employer to report to the commis-
2 sion, the successor to the commission or another private
3 carrier, whichever is applicable, every injury sustained by
4 any person in his or her employ. The report shall be on
5 forms prescribed by the commission or the insurance
6 commissioner, whichever is applicable, and shall be made
7 within five days of the employer's receipt of the em-
8 ployee's notice of injury, required by section one-a of this
9 article, or within five days after the employer has been
10 notified by the commission or the insurance commissioner,
11 whichever is applicable, that a claim for benefits has been
12 filed on account of such injury, whichever is sooner, and,
13 notwithstanding any other provision of this chapter to the
14 contrary, the five-day period may not be extended by the
15 commission the successor to the commission, or another
16 private carrier, whichever is applicable, but the employer
17 has the right to file a supplemental report at a later date.
18 The employer's report of injury shall include a statement
19 as to whether or not, on the basis of the information
20 available, the employer disputes the compensability of the
21 injury or objects to the payment of temporary total
22 disability benefits in connection with the injury. The
23 statements by the employer shall not prejudice the em-
24 ployer's right thereafter to contest the compensability of
25 the injury, or to object to any subsequent finding or award,
26 in accordance with article five of this chapter; but an
27 employer's failure to make timely report of an injury as
28 required in this section, or statements in the report to the
29 effect that the employer does not dispute the compensabil-
30 ity of the injury or object to the payment of temporary
31 total disability benefits for the injury, shall be considered
32 to be a waiver of the employer's right to object to any
33 interim payment of temporary total disability benefits
34 paid by the commission, the successor to the commission,
35 or another private carrier with respect to any period from
36 the date of injury to the date of receipt of any objection
37 made to the interim payments by the employer.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission, successor to the commission, other private carriers and self-insured employers to collect payments improperly made.

1 (a) In any claim for benefits under this chapter, the
2 workers' compensation commission, the successor to the
3 commission, other private carriers or self-insured em-
4 ployer, whichever is applicable, shall determine whether
5 the claimant has sustained a compensable injury within
6 the meaning of section one of this article and enter an
7 order giving all parties immediate notice of the decision.

8 (1) The commission, successor to the commission, other
9 private carrier or selfinsured employer, whichever is
10 applicable, may enter an order conditionally approving the
11 claimant's application if it finds that obtaining additional
12 medical evidence or evaluations or other evidence related
13 to the issue of compensability would aid the commission
14 in making a correct final decision. Benefits shall be paid
15 during the period of conditional approval; however, if the
16 final decision is one that rejects the claim, the payments
17 shall be considered an overpayment. The commission,
18 successor to the commission, other private carrier or self-
19 insured employer, whichever is applicable, may only
20 recover the amount of the overpayment as provided for in
21 subsection (h) of this section.

22 (2) In making a determination regarding the compensa-
23 bility of a newly filed claim or upon a filing for the
24 reopening of a prior claim pursuant to the provisions of
25 section sixteen of this article based upon an allegation of
26 recurrence, reinjury, aggravation or progression of the
27 previous compensable injury or in the case of a filing of a
28 request for any other benefits under the provisions of this
29 chapter, the commission, successor to the commission,
30 other private carrier or self-insured employer, whichever

31 is applicable, shall consider the date of the filing of the
32 claim for benefits for a determination of the following:

33 (A) Whether the claimant had a scheduled shutdown
34 beginning within one week of the date of the filing;

35 (B) Whether the claimant received notice within sixty
36 days of the filing that his or her employment position was
37 to be eliminated, including, but not limited to, the claim-
38 ant's worksite, a layoff or the elimination of the claimant's
39 employment position;

40 (C) Whether the claimant is receiving unemployment
41 compensation benefits at the time of the filing; or

42 (D) Whether the claimant has received unemployment
43 compensation benefits within sixty days of the filing. In the
44 event of an affirmative finding upon any of these four
45 factors, the finding shall be given probative weight in the
46 overall determination of the compensability of the claim
47 or of the merits of the reopening request.

48 (3) Any party may object to the order of the commission,
49 successor to the commission, other private carrier or self-
50 insured employer, whichever is applicable, and obtain an
51 evidentiary hearing as provided in section one, article five
52 of this chapter: *Provided*, That if the successor to the
53 commissioner, other private carrier or self-insured,
54 whichever is applicable, fails to timely issue a ruling upon
55 any application or motion as provided by law, or if the
56 claimant files a timely protest to the ruling of a self-
57 insured employer, private carrier, or other issuing entity,
58 denying the compensability of the claim, denying initial
59 temporary total disability benefits or denying medical
60 authorization, the office of judges shall provide a hearing
61 on the protest on an expedited basis as determined by rule
62 of the office of judges.

63 (b) Where it appears from the employer's report, or from
64 proper medical evidence, that a compensable injury will
65 result in a disability which will last longer than three days

66 as provided in section five of this article, the commission,
67 successor to the commission, other private carrier or self-
68 insured employer, whichever is applicable, may immedi-
69 ately enter an order commencing the payment of tempo-
70 rary total disability benefits to the claimant in the
71 amounts provided for in sections six and fourteen of this
72 article, and the payment of the expenses provided for in
73 subsection (a), section three of this article, relating to the
74 injury, without waiting for the expiration of the thirty-day
75 period during which objections may be filed to the find-
76 ings as provided in section one, article five of this chapter.
77 The commission, successor to the commission, other
78 private carrier or self-insured employer, whichever is
79 applicable, shall enter an order commencing the payment
80 of temporary total disability or medical benefits within
81 fifteen working days of receipt of either the employee's or
82 employer's report of injury, whichever is received sooner,
83 and also upon receipt of either a proper physician's report
84 or any other information necessary for a determination.
85 The commission, successor to the commission, other
86 private carrier or self-insured employer, whichever is
87 applicable, shall give to the parties immediate notice of
88 any order granting temporary total disability or medical
89 benefits. When an order granting temporary total disabili-
90 ty benefits is made, the claimant's return-to-work poten-
91 tial shall be assessed. The commission may schedule
92 medical and vocational evaluation of the claimant and
93 assign appropriate personnel to expedite the claimant's
94 return to work as soon as reasonably possible.

95 (c) The commission, successor to the commission, other
96 private carrier or selfinsured employer, whichever is
97 applicable, may enter orders granting temporary total
98 disability benefits upon receipt of medical evidence
99 justifying the payment of the benefits. The commission,
100 successor to the commission, other private carrier or self-
101 insured employer, whichever is applicable, may not enter
102 an order granting prospective temporary total disability
103 benefits for a period of more than ninety days: *Provided,*

104 That when the commission, successor to the commission,
105 other private carrier or self-insured employer, whichever
106 is applicable, determines that the claimant remains
107 disabled beyond the period specified in the prior order
108 granting temporary total disability benefits, the commis-
109 sion shall enter an order continuing the payment of
110 temporary total disability benefits for an additional period
111 not to exceed ninety days and shall give immediate notice
112 to all parties of the decision.

113 (d) Upon receipt of the first report of injury in claim, the
114 commission, successor to the commission, other private
115 carrier or self-insured employer, whichever is applicable,
116 shall request from the employer or employers any wage
117 information necessary for determining the rate of benefits
118 to which the employee is entitled. If an employer does not
119 furnish this information within fifteen days from the date
120 the commission, successor to the commission, other private
121 carrier or self-insured employer, whichever is applicable,
122 received the first report of injury in the case, the employee
123 shall be paid temporary total disability benefits for lost
124 time at the rate the commission obtains from reports made
125 pursuant to subsection (b), section two, article two of this
126 chapter. If no wages have been reported, the commission,
127 successor to the commission, other private carrier or self-
128 insured employer, whichever is applicable, shall make the
129 payments at the rate the commission, successor to the
130 commission, other private carrier or self-insured employer,
131 whichever is applicable, finds would be justified by the
132 usual rate of pay for the occupation of the injured em-
133 ployee. The rate of benefits shall be adjusted both retroac-
134 tively and prospectively upon receipt of proper wage
135 information. The commission shall have access to all wage
136 information in the possession of any state agency.

137 (e) Subject to the limitations set forth in section sixteen
138 of this article, upon a finding of the commission, successor
139 to the commission, other private carrier or self-insured
140 employer, whichever is applicable, that a claimant who

141 has sustained a previous compensable injury which has
142 been closed by order, or by the claimant's return to work,
143 suffers further temporary total disability or requires
144 further medical or hospital treatment resulting from the
145 compensable injury, payment of temporary total disability
146 benefits to the claimant in the amount provided for in
147 sections six and fourteen of this article shall immediately
148 commence, and the expenses provided for in subsection (a),
149 section three of this article, relating to the disability,
150 without waiting for the expiration of the thirty-day period
151 during which objections may be filed. Immediate notice to
152 the parties of the decision shall be given.

153 (f) Where the employer is a subscriber to the workers'
154 compensation fund under the provisions of article three of
155 this chapter, and upon the findings aforesaid, the commis-
156 sion shall mail all workers' compensation checks paying
157 temporary total disability benefits directly to the claimant
158 and not to the employer for delivery to the claimant.

159 (g) Where the employer has elected to carry its own risk
160 under section nine, article two of this chapter, and upon
161 the findings aforesaid, the self-insured employer shall
162 immediately pay the amounts due the claimant for tempo-
163 rary total disability benefits. A copy of the notice shall be
164 sent to the claimant.

165 (h) In the event that an employer files a timely objection
166 to any order of the division with respect to compensability,
167 or any order denying an application for modification with
168 respect to temporary total disability benefits, or with
169 respect to those expenses outlined in subsection (a), section
170 three of this article, the division shall continue to pay to
171 the claimant such benefits and expenses during the period
172 of such disability. Where it is subsequently found by the
173 division that the claimant was not entitled to receive such
174 temporary total disability benefits or expenses, or any part
175 thereof, so paid, the division shall, when the employer is a
176 subscriber to the fund, credit said employer's account with
177 the amount of the overpayment. When the employer has

178 protested the compensability or applied for modification
179 of a temporary total disability benefit award or expenses
180 and the final decision in that case determines that the
181 claimant was not entitled to the benefits or expenses, the
182 amount of benefits or expenses is considered overpaid.
183 For all awards made or nonawarded partial benefits paid
184 the commission, the successor to the commission, other
185 private carriers, or self-insured employer may recover the
186 amount of overpaid benefits or expenses by withholding,
187 in whole or in part, future disability benefits payable to
188 the individual in the same or other claims and credit the
189 amount against the overpayment until it is repaid in full.

190 (i) In the event that the commission, successor to the
191 commission, other private carrier or self-insured employer,
192 whichever is applicable, finds that, based upon the em-
193 ployer's report of injury, the claim is not compensable, the
194 commission, successor to the commission, other private
195 carrier or self-insured employer, whichever is applicable,
196 shall provide a copy of the employer's report to the
197 claimant in addition to the order denying the claim.

198 (j) If a claimant is receiving benefits paid through a wage
199 replacement plan, salary continuation plan or other
200 benefit plan provided by the employer to which the
201 employee has not contributed, and that plan does not
202 provide an offset for temporary total disability benefits to
203 which the claimant is also entitled under this chapter as a
204 result of the same injury or disease, the employer shall
205 notify the commission of the duplication of the benefits
206 paid to the claimant. Upon receipt of the notice, the
207 commission, successor to the commission, other private
208 carrier or self-insured employer, whichever is applicable,
209 shall reduce the temporary total disability benefits
210 provided under this chapter by an amount sufficient to
211 ensure that the claimant does not receive monthly benefits
212 in excess of the amount provided by the employer's plan or
213 the temporary total disability benefit, whichever is
214 greater: *Provided*, That this subsection does not apply to

215 benefits being paid under the terms and conditions of a
216 collective bargaining agreement.

§23-4-1d. Method and time of payments for permanent disability.

1 (a) If the commission, successor to the commission, other
2 private carrier or self-insured employer, whichever is
3 applicable, makes an award for permanent partial or
4 permanent total disability, the commission, successor to
5 the commission, other private carrier or self-insured
6 employer, whichever is applicable, shall start payment of
7 benefits by mailing or delivering the amount due directly
8 to the employee within fifteen working days from the date
9 of the award: *Provided*, That the commission, successor to
10 the commission, other private carrier or self-insured
11 employer, whichever is applicable, may withhold payment
12 of the portion of the award that is the subject of subsec-
13 tion (b) of this section until seventy-seven days have
14 expired without an objection being filed.

15 (b) When the commission, successor to the commission,
16 other private carrier, self-insured employer, the office of
17 judges or the workers' compensation board of review,
18 whichever is applicable, enters an order or provides notice
19 granting the claimant a permanent total disability award
20 and an objection or petition for appeal is filed by the
21 employer, the commission the successor to the commission
22 or other private carrier, payment of monthly permanent
23 total disability benefits shall begin. However, any pay-
24 ment for a back period of benefits from the onset date of
25 total permanent disability to the date of the award shall be
26 limited to a period of twelve months of benefits. If, after
27 all litigation is completed and the time for the filing of any
28 further objections or appeals to the award has expired and
29 the award of permanent total disability benefits is upheld,
30 the claimant shall receive the remainder of benefits due to
31 him or her based upon the onset date of permanent total
32 disability that was finally determined.

33 (c) If the claimant is owed any additional payment of
34 back permanent total disability benefits, the commission,
35 successor to the commission, other private carrier or self-
36 insured employer, whichever is applicable, shall not only
37 pay the claimant the sum owed but shall also add thereto
38 interest at the simple rate of six percent per annum from
39 the date of the initial award granting the total permanent
40 disability to the date of the final order upholding the
41 award. In the event that an intermediate order directed an
42 earlier onset date of permanent total disability than was
43 found in the initial award, the interest-earning period for
44 that additional period shall begin upon the date of the
45 intermediate award. Any interest payable shall be charged
46 to the account of the employer or shall be paid by the
47 employer if it has elected to carry its own risk.

48 (d) If a timely protest to the award is filed, as provided
49 in section one or nine, article five of this chapter, benefits
50 shall continue to be paid to the claimant benefits during
51 the period of the disability unless it is subsequently found
52 that the claimant was not entitled to receive the benefits,
53 or any part thereof, in which event the commission shall,
54 where the employer is a subscriber to the fund, credit the
55 employer's account with the amount of the overpayment.
56 If the final decision in any case determines that a claimant
57 was not lawfully entitled to benefits paid to him or her
58 pursuant to a prior decision, the amount of benefit paid
59 shall be considered overpaid. For all awards made or
60 nonawarded partial benefits paid the commission, succes-
61 sor to the commission, other private carrier or self-insured
62 employer, whichever is applicable, may only recover that
63 amount by withholding, in whole or in part, as determined
64 by the commission, successor to the commission, other
65 private carrier or self-insured employer, whichever is
66 applicable, future disability benefits payable to the
67 individual in the same or other claims and credit the
68 amount against the overpayment until it is repaid in full.

69 (e) An award for permanent partial disability shall be
70 made as expeditiously as possible and in accordance with

71 the time frame requirements promulgated by the board of
72 managers.

73 (f) If a claimant is receiving benefits paid through a
74 retirement plan, wage replacement plan, salary continua-
75 tion plan or other benefit plan provided by the employer
76 to which the employee has not contributed, and that plan
77 does not provide an offset for permanent total disability
78 benefits to which the claimant is also entitled under this
79 chapter as a result of the same injury or disease, the
80 employer shall notify the commission, successor to the
81 commission, other private carrier or self-insured employer,
82 whichever is applicable, of the duplication of the benefits
83 paid to the claimant. Upon receipt of the notice, the
84 commission, successor to the commission, other private
85 carrier or self-insured employer, whichever is applicable,
86 shall reduce the permanent total disability benefits
87 provided under this chapter by an amount sufficient to
88 ensure that the claimant does not receive monthly benefits
89 in excess of the amount provided by the employer's plan or
90 the permanent total disability benefit, whichever is
91 greater: *Provided*, That this subsection does not apply to
92 benefits being paid under the terms and conditions of a
93 collective bargaining agreement.

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

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 time
4 in excess of three days during which that person is con-
5 fined in a state correctional facility or jail: *Provided*, That
6 confinement shall not affect the claimant's eligibility for
7 payment of expenses: *Provided, however*, That this
8 subsection is applicable only to injuries and diseases
9 incurred prior to any period of confinement. Upon release
10 from confinement, the payment of benefits for the remain-

11 ing period of temporary total disability shall be made if
12 justified by the evidence and authorized by order of the
13 commission, successor to the commission, other private
14 carrier or self-insured employer, whichever is applicable.

15 (b) Notwithstanding any provision of this code to the
16 contrary, no person confined in a state correctional facility
17 or jail who suffers injury or a disease in the course of and
18 resulting from his or her work during the period of con-
19 finement which work is imposed by the administration of
20 the state correctional facility or jail and is not suffered
21 during the person's usual employment with his or her
22 usual employer when not confined shall receive benefits
23 under the provisions of this chapter for the injury or
24 disease.

§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 program; payments; interlocutory orders.

1 (a) The workers' compensation commission, and effective
2 upon termination of the commission, the insurance
3 commissioner, shall establish and alter from time to time,
4 as it determines appropriate, a schedule of the maximum
5 reasonable amounts to be paid to health care providers,
6 providers of rehabilitation services, providers of durable
7 medical and other goods and providers of other supplies
8 and medically related items or other persons, firms or
9 corporations for the rendering of treatment or services to
10 injured employees under this chapter. The commission

11 and effective upon termination of the commission, the
12 insurance commissioner, also, on the first day of each
13 regular session and also from time to time, as it may
14 consider appropriate, shall submit the schedule, with any
15 changes thereto, to the Legislature.

16 The commission, and effective upon termination of the
17 commission, all private carriers and self-insured employ-
18 ers or their agents, shall disburse and pay for personal
19 injuries to the employees who are entitled to the benefits
20 under this chapter as follows:

21 (1) Sums for health care services, rehabilitation services,
22 durable medical and other goods and other supplies and
23 medically related items as may be reasonably required.
24 The commission, and effective upon termination of the
25 commission, all private carriers and self-insured employ-
26 ers or their agents, shall determine that which is reason-
27 ably required within the meaning of this section in accor-
28 dance with the guidelines developed by the health care
29 advisory panel pursuant to section three-b of this article:
30 *Provided*, That nothing in this section shall prevent the
31 implementation of guidelines applicable to a particular
32 type of treatment or service or to a particular type of
33 injury before guidelines have been developed for other
34 types of treatment or services or injuries: *Provided*,
35 *however*, That any guidelines for utilization review which
36 are developed in addition to the guidelines provided for in
37 section three-b of this article may be used by the commis-
38 sion, and effective upon termination of the commission, all
39 private carriers and self-insured employers or their agents,
40 until superseded by guidelines developed by the health
41 care advisory panel pursuant to said section. Each health
42 care provider who seeks to provide services or treatment
43 which are not within any guideline shall submit to the
44 commission, and effective upon termination of the com-
45 mission, all private carriers, self-insured employers and
46 other payors, specific justification for the need for the
47 additional services in the particular case and the commis-

48 sion shall have the justification reviewed by a health care
49 professional before authorizing the additional services.
50 The commission, and effective upon termination of the
51 commission, all private carriers, self-insured employers
52 and other payors, may enter into preferred provider and
53 managed care agreements which provides for fees and
54 other payments which deviate from the schedule set forth
55 in this subsection.

56 (2) Payment for health care services, rehabilitation
57 services, durable medical and other goods and other
58 supplies and medically related items authorized under this
59 subsection may be made to the injured employee or to the
60 person, firm or corporation who or which has rendered the
61 treatment or furnished health care services, rehabilitation
62 services, durable medical or other goods or other supplies
63 and items, or who has advanced payment for them, as the
64 commission, and effective upon termination of the com-
65 mission, all private carriers, self-insured employers and
66 other payors, considers proper, but no payments or
67 disbursements shall be made or awarded by the commis-
68 sion unless duly verified statements on forms prescribed
69 by the commission, and effective upon termination of the
70 commission, all private carriers, self-insured employers
71 and other payors, have been filed within six months after
72 the rendering of the treatment or the delivery of such
73 goods, supplies or items or within ninety days of a subse-
74 quent compensability ruling if a claim is initially rejected:
75 *Provided*, That no payment under this section shall be
76 made unless a verified statement shows no charge for or
77 with respect to the treatment or for or with respect to any
78 of the items specified in this subdivision has been or will
79 be made against the injured employee or any other person,
80 firm or corporation. When an employee covered under the
81 provisions of this chapter is injured, in the course of and
82 as a result of his or her employment and is accepted for
83 health care services, rehabilitation services, or the provi-
84 sion of durable medical or other goods or other supplies or
85 medically related items, the person, firm or corporation

86 rendering the treatment may not make any charge or
87 charges for the treatment or with respect to the treatment
88 against the injured employee or any other person, firm or
89 corporation which would result in a total charge for the
90 treatment rendered in excess of the maximum amount set
91 forth therefor in the commission schedule set forth in this
92 subsection.

93 (3) Any pharmacist filling a prescription for medication
94 for a workers' compensation claimant shall dispense a
95 generic brand of the prescribed medication if a generic
96 brand exists. If a generic brand does not exist, the phar-
97 macist may dispense the name brand. In the event that a
98 claimant wishes to receive the name brand medication in
99 lieu of the generic brand, the claimant may receive the
100 name brand medication but, in that event, the claimant is
101 personally liable for the difference in costs between the
102 generic brand medication and the brand name medication.

103 (4) In the event that a claimant elects to receive health
104 care services from a health care provider from outside of
105 the state of West Virginia and if that health care provider
106 refuses to abide by and accept as full payment the reim-
107 bursement made by the workers' compensation commis-
108 sion, and effective upon termination of the commission, all
109 private carriers and self-insured employers or their agents,
110 pursuant to the schedule of maximum reasonable amounts
111 of fees authorized by this subsection, with the exceptions
112 noted below, the claimant is personally liable for the
113 difference between the scheduled fee and the amount
114 demanded by the out-of-state health care provider.

115 (A) In the event of an emergency where there is an
116 urgent need for immediate medical attention in order to
117 prevent the death of a claimant or to prevent serious and
118 permanent harm to the claimant, if the claimant receives
119 the emergency care from an out-of-state health care
120 provider who refuses to accept as full payment the sched-
121 uled amount, the claimant is not personally liable for the
122 difference between the amount scheduled and the amount

123 demanded by the health care provider. Upon the claim-
124 ant's attaining a stable medical condition and being able
125 to be transferred to either a West Virginia health care
126 provider or an out-of-state health care provider who has
127 agreed to accept the scheduled amount of fees as payment
128 in full, if the claimant refuses to seek the specified alterna-
129 tive health care providers, he or she is personally liable for
130 the difference in costs between the scheduled amount and
131 the amount demanded by the health care provider for
132 services provided after attaining stability and being able
133 to be transferred.

134 (B) In the event that there is no health care provider
135 reasonably near to the claimant's home who is qualified to
136 provide the claimant's needed medical services who is
137 either located in the state of West Virginia or who has
138 agreed to accept as payment in full the scheduled amounts
139 of fees, the commission, upon application by the claimant,
140 may authorize the claimant to receive medical services
141 from another health care provider. The claimant is not
142 personally liable for the difference in costs between the
143 scheduled amount and the amount demanded by the health
144 care provider.

145 (b) (1) No employer shall enter into any contracts with
146 any hospital, its physicians, officers, agents or employees
147 to render medical, dental or hospital service or to give
148 medical or surgical attention to any employee for injury
149 compensable within the purview of this chapter and no
150 employer shall permit or require any employee to contrib-
151 ute, directly or indirectly, to any fund for the payment of
152 such medical, surgical, dental or hospital service within
153 such hospital for the compensable injury. Any employer
154 violating this subsection is liable in damages to the em-
155 ployer's employees as provided in section eight, article two
156 of this chapter, and any employer or hospital or agent or
157 employee thereof violating the provisions of this section is
158 guilty of a misdemeanor and, upon conviction thereof,
159 shall be punished by a fine not less than one hundred

160 dollars nor more than one thousand dollars or by impris-
161 onment not exceeding one year, or both.

162 (2) The provisions of this subsection shall not prohibit an
163 employer, the successor to the commission, other private
164 carrier or self-insured employer from participating in a
165 managed health care plan, including, but not limited to, a
166 preferred provider organization or program or a health
167 maintenance organization or managed care organization
168 or other medical cost containment relationship with the
169 providers of medical, hospital or other health care. An
170 employer, successor to the commission, other private
171 carrier or self-insured employer that provides a managed
172 health care plan approved by the commission or, upon
173 termination of the commission, the insurance commis-
174 sioner, for its employees or the employees of its insured
175 may require an injured employee to use health care
176 providers authorized by the managed health care plan for
177 care and treatment of his or her compensable injuries. If
178 the employer does not provide a managed health care plan
179 or program, the claimant may select his or her initial
180 health care provider for treatment of a compensable injury
181 or disease, except as provided under subdivision (3) of this
182 subsection. If a claimant wishes to change his or her
183 health care provider and if his or her employer has estab-
184 lished and maintains a managed health care plan, the
185 claimant shall select a new health care provider through
186 the managed health care plan. A claimant who has used
187 the providers under the employer's managed health care
188 plan may select a health care provider outside the em-
189 ployer's plan for treatment of the compensable injury or
190 disease if the employee receives written approval from the
191 commission to do so and the approval is given pursuant to
192 criteria established by rule of the commission.

193 (3) If the commission enters into an agreement which has
194 been approved by the board of managers with a managed
195 health care plan, including, but not limited to, a preferred
196 provider organization or program, a health maintenance

197 organization or managed care organization or other health
198 care delivery organization or organizations or other
199 medical cost containment relationship with the providers
200 of medical, hospital or other health care, then:

201 (A) If an injured employee's employer does not provide
202 a managed health care plan approved by the commission
203 for its employees as described in subdivision (2) of this
204 subsection, the commission may require the employee to
205 use health care providers authorized by the commission's
206 managed health care plan for care and treatment of his or
207 her compensable injuries; and

208 (B) If a claimant seeks to change his or her initial choice
209 of health care provider where neither the employer nor the
210 commission had an approved health care management
211 plan at the time the initial choice was made, and if the
212 claimant's employer does not provide access to such a plan
213 as part of the employer's general health insurance benefit,
214 then the claimant shall be provided with a new health care
215 provider from the commission's managed health care plan
216 available to him or her.

217 (c) When an injury has been reported to the commission
218 by the employer without protest, the commission or self-
219 insured employer may pay, within the maximum amount
220 provided by schedule established under this section, bills
221 for health care services without requiring the injured
222 employee to file an application for benefits.

223 (d) The commission, successor to the commission, other
224 private carrier or self-insured employer, whichever is
225 applicable, shall provide for the replacement of artificial
226 limbs, crutches, hearing aids, eyeglasses and all other
227 mechanical appliances provided in accordance with this
228 section which later wear out, or which later need to be
229 refitted because of the progression of the injury which
230 caused the devices to be originally furnished, or which are
231 broken in the course of and as a result of the employee's
232 employment. The commission, successor to the commis-

233 sion, other private carrier or self-insured employer shall
234 pay for these devices, when needed, notwithstanding any
235 time limits provided by law.

236 (e) No payment shall be made to a health care provider
237 who is suspended or terminated under the terms of section
238 three-c of this article except as provided in subsection (c)
239 of said section.

240 (f) The commission, successor to the commission, other
241 private carrier or self-insured employer, whichever is
242 applicable, may engage in and contract for medical cost
243 containment programs, pharmacy benefits management
244 programs, medical case management programs and
245 utilization review programs. Payments for these programs
246 shall be made from the workers' compensation fund or the
247 funds of the successor to the commission, other private
248 carrier, or self-insured employer. Any order issued
249 pursuant to the program shall be interlocutory in nature
250 until an objecting party has exhausted all review processes
251 provided for by the commission, successor to the commis-
252 sion, other private carrier or self-insured employer,
253 whichever is applicable.

254 (g) Notwithstanding the provisions of this section, the
255 commission, successor to the commission, other private
256 carrier or self-insured employer may establish fee sched-
257 ules, make payments and take other actions required or
258 allowed pursuant to article twenty-nine-a, chapter sixteen
259 of this code.

§23-4-3b. Creation of health care advisory panel.

1 (a) The commission shall establish a health care advisory
2 panel consisting of representatives of the various branches
3 and specialties among health care providers in this state
4 which shall be in existence until termination of the
5 commission. There shall be a minimum of five members of
6 the health care advisory panel who shall receive reason-
7 able compensation for their services and reimbursement

8 for reasonable actual expenses. Each member of this panel
9 shall be provided appropriate professional or other
10 liability insurance, without additional premium, by the
11 state board of risk and insurance management created
12 pursuant to article twelve, chapter twenty-nine of this
13 code. The panel shall:

14 (1) Establish guidelines for the health care which is
15 reasonably required for the treatment of the various types
16 of injuries and occupational diseases within the meaning
17 of section three of this article;

18 (2) Establish protocols and procedures for the perfor-
19 mance of examinations or evaluations performed by
20 physicians or medical examiners pursuant to sections
21 seven-a and eight of this article;

22 (3) Assist the commission in establishing guidelines for
23 the evaluation of the care provided by health care provid-
24 ers to injured employees for purposes of section three-c of
25 this article;

26 (4) Assist the commission in establishing guidelines
27 regarding the anticipated period of disability for the
28 various types of injuries pursuant to subsection (b), section
29 seven-a of this article; and

30 (5) Assist the commission in establishing appropriate
31 professional review of requests by health care providers to
32 exceed the guidelines for treatment of injuries and occupa-
33 tional diseases established pursuant to subdivision (1) of
34 this section.

35 (b) In addition to the requirements of subsection (a) of
36 this section, on or before the thirty-first day of December,
37 two thousand three, the board of managers shall promul-
38 gate a rule establishing the process for the medical man-
39 agement of claims and awards of disability which in-
40 cludes, but is not limited to, reasonable and standardized
41 guidelines and parameters for appropriate treatment,
42 expected period of time to reach maximum medical

43 improvement and range of permanent partial disability
44 awards for common injuries and diseases or, in the alter-
45 native, which incorporates by reference the medical and
46 disability management guidelines, plan or program being
47 utilized by the commission for the medical and disability
48 management of claims, with the requirements, standards,
49 parameters and limitations of such guidelines, plan or
50 program having the same force and effect as the rule
51 promulgated in compliance herewith.

§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.

1 (a) In case the personal injury causes death, reasonable
2 funeral or cemetery expense, in an amount to be fixed,
3 from time to time, by the commission, and upon its
4 termination, the insurance commissioner, shall be paid
5 from the fund, or the private carrier, payment to be made
6 to the persons who have furnished the services and sup-
7 plies, or to the persons who have advanced payment for
8 the services and supplies, as the commission may deter-
9 mine proper, in addition to any award made to the em-
10 ployee's dependents.

11 (b) A funeral director or cemeterian, or any person who
12 furnished the services and supplies associated with the
13 funeral or cemetery expenses, or a person who has ad-
14 vanced payment for the services and supplies, is prohibited
15 from making any charge or charges against the employee's
16 dependents for funeral expenses which would result in a
17 total charge for funeral expenses in excess of the amount
18 fixed by the commission, and upon its termination, the
19 insurance commissioner, unless:

20 (1) The person seeking funeral expenses notifies, in
21 writing and prior to the rendering of any service, the
22 employee's dependent as to the exact cost of the service
23 and the exact amount the employee's dependent would be
24 responsible for paying in excess of the amount fixed by the
25 commission or insurance commissioner; and

26 (2) The person seeking funeral expenses secures, in
27 writing and prior to the rendering of any service, consent
28 from the employee's dependent that he or she will be
29 responsible to make payment for the amount in excess of
30 the amount fixed by the commission or the insurance
31 commissioner.

32 (c) Any person who knowingly and willfully seeks or
33 receives payment of funeral expenses in excess of the
34 amount fixed by the commission or the insurance commis-
35 sioner without satisfying both of the requirements of
36 subsection (b) of this section is guilty of a misdemeanor
37 and, upon conviction thereof, shall be fined three thousand
38 dollars or confined in jail for a definite term of confine-
39 ment of twelve months, or both.

§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 compen-
3 sation shall be as provided in the following schedule:

4 (a) The terms "average weekly wage earnings, wherever
5 earned, of the injured employee, at the date of injury" and
6 "average weekly wage in West Virginia", as used in this
7 chapter, have the meaning and shall be computed as set
8 forth in section fourteen of this article except for the
9 purpose of computing temporary total disability benefits
10 for part-time employees pursuant to the provisions of
11 section six-d of this article.

12 (b) For all awards made on and after the effective date
13 of the amendment and reenactment of this section during
14 the year two thousand three, if the injury causes tempo-
15 rary total disability, the employee shall receive during the
16 continuance of the disability a maximum weekly benefit
17 to be computed on the basis of sixty-six and two-thirds
18 percent of the average weekly wage earnings, wherever
19 earned, of the injured employee, at the date of injury, not
20 to exceed one hundred percent of the average weekly wage

21 in West Virginia: *Provided*, That in no event shall an
22 award for temporary total disability be subject to annual
23 adjustments resulting from changes in the average weekly
24 wage in West Virginia: *Provided, however*, in the case of a
25 claimant whose award was granted prior to the effective
26 date of the amendment and reenactment of this section
27 during the year two thousand three, the maximum benefit
28 rate shall be the rate applied under the prior enactment of
29 this subsection which was in effect at the time the injury
30 occurred. The minimum weekly benefits paid under this
31 subdivision shall not be less than thirty-three and one-
32 third percent of the average weekly wage in West Virginia,
33 except as provided in sections six-d and nine of this
34 article. In no event, however, shall the minimum weekly
35 benefits exceed the level of benefits determined by use of
36 the applicable federal minimum hourly wage: *Provided*
37 *further*, That any claimant receiving permanent total
38 disability benefits, permanent partial disability benefits or
39 dependents' benefits prior to the first day of July, one
40 thousand nine hundred ninety-four, shall not have his or
41 her benefits reduced based upon the requirement in this
42 subdivision that the minimum weekly benefit shall not
43 exceed the applicable federal minimum hourly wage.

44 (c) Subdivision (b) of this section is limited as follows:
45 Aggregate award for a single injury causing temporary
46 disability shall be for a period not exceeding two hundred
47 eight weeks; aggregate award for a single injury for which
48 an award of temporary total disability benefits is made on
49 or after the effective date of the amendment and
50 reenactment of this section in the year two thousand three
51 shall be for a period not exceeding one hundred four
52 weeks. Notwithstanding any other provision of this
53 subdivision to the contrary, no person may receive tempo-
54 rary total disability benefits under an award for a single
55 injury for a period exceeding one hundred four weeks from
56 the effective date of the amendment and reenactment of
57 this section in the year two thousand three.

58 (d) For all awards of permanent total disability benefits
59 that are made on or after the second day of February, one
60 thousand nine hundred ninety-five, including those claims
61 in which a request for an award was pending before the
62 division or which were in litigation but not yet submitted
63 for a decision, then benefits shall be payable until the
64 claimant attains the age necessary to receive federal old
65 age retirement benefits under the provisions of the Social
66 Security Act, 42 U.S.C. §§401 and 402, in effect on the
67 effective date of this section. The claimant shall be paid
68 benefits so as not to exceed a maximum benefit of sixty-
69 six and two-thirds percent of the claimant's average
70 weekly wage earnings, wherever earned, at the time of the
71 date of injury not to exceed one hundred percent of the
72 average weekly wage in West Virginia. The minimum
73 weekly benefits paid under this section shall be as is
74 provided for in subdivision (b) of this section. In all claims
75 in which an award for permanent total disability benefits
76 was made prior to the second day of February, one thou-
77 sand nine hundred ninety-five, the awards shall continue
78 to be paid at the rate in effect prior to the effective date of
79 the amendment and reenactment of this section in the year
80 two thousand three: *Provided*, That the provisions of
81 sections one through eight, inclusive, article four-a of this
82 chapter shall be applied thereafter to all prior awards that
83 were previously subject to its provisions. A single or
84 aggregate permanent disability of eighty-five percent or
85 more entitles the employee to a rebuttable presumption of
86 a permanent total disability for the purpose of paragraph
87 (2), subdivision (n) of this section: *Provided, however*, That
88 the claimant must also be at least fifty percent medically
89 impaired upon a whole body basis or has sustained a
90 thirty-five percent statutory disability pursuant to the
91 provisions of subdivision (f) of this section. The presump-
92 tion may be rebutted if the evidence establishes that the
93 claimant is not permanently and totally disabled pursuant
94 to subdivision (n) of this section. Under no circumstances
95 may the commission, successor to the commission, other
96 private carrier or self-insured employer, whichever is

97 applicable, grant an additional permanent disability
98 award to a claimant receiving a permanent total disability
99 award: *Provided further*, That if any claimant thereafter
100 sustains another compensable injury and has permanent
101 partial disability resulting from the injury, the total
102 permanent disability award benefit rate shall be computed
103 at the highest benefit rate justified by any of the compen-
104 sable injuries.

105 (e) (1) For all awards made on or after the effective date
106 of the amendment and reenactment of this section during
107 the year two thousand three, if the injury causes perma-
108 nent disability less than permanent total disability, the
109 percentage of disability to total disability shall be deter-
110 mined and the award computed on the basis of four weeks'
111 compensation for each percent of disability determined at
112 the maximum or minimum benefit rates as follows: Sixty-
113 six and two-thirds percent of the average weekly wage
114 earnings, wherever earned, of the injured employee at the
115 date of injury, not to exceed seventy percent of the average
116 weekly wage in West Virginia: *Provided*, That in no event
117 shall an award for permanent partial disability be subject
118 to annual adjustments resulting from changes in the
119 average weekly wage in West Virginia: *Provided, however*,
120 That in the case of a claimant whose award was granted
121 prior to the effective date of the amendment and
122 reenactment of this section during the year two thousand
123 three, the maximum benefit rate shall be the rate applied
124 under the prior enactment of this section which was in
125 effect at the time the injury occurred.

126 (2) If a claimant is released by his or her treating physi-
127 cian to return to work at the job he or she held before the
128 occupational injury occurred and if the claimant's
129 preinjury employer does not offer the preinjury job or a
130 comparable job to the employee when a position is avail-
131 able to be offered, the award for the percentage of partial
132 disability shall be computed on the basis of six weeks of
133 compensation for each percent of disability.

134 (3) The minimum weekly benefit under this subdivision
135 shall be as provided in subdivision (b) of this section for
136 temporary total disability.

137 (f) If the injury results in the total loss by severance of
138 any of the members named in this subdivision, the per-
139 centage of disability shall be determined by the percentage
140 of disability, specified in the following table:

141 The loss of a great toe shall be considered a ten percent
142 disability.

143 The loss of a great toe (one phalanx) shall be considered
144 a five percent disability.

145 The loss of other toes shall be considered a four percent
146 disability.

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

149 The loss of all toes shall be considered a twenty-five
150 percent disability.

151 The loss of forepart of foot shall be considered a thirty
152 percent disability.

153 The loss of a foot shall be considered a thirty-five
154 percent disability.

155 The loss of a leg shall be considered a forty-five percent
156 disability.

157 The loss of thigh shall be considered a fifty percent
158 disability.

159 The loss of thigh at hip joint shall be considered a sixty
160 percent disability.

161 The loss of a little or fourth finger (one phalanx) shall be
162 considered a three percent disability.

163 The loss of a little or fourth finger shall be considered a
164 five percent disability.

165 The loss of ring or third finger (one phalanx) shall be
166 considered a three percent disability.

167 The loss of ring or third finger shall be considered a five
168 percent disability.

169 The loss of middle or second finger (one phalanx) shall
170 be considered a three percent disability.

171 The loss of middle or second finger shall be considered
172 a seven percent disability.

173 The loss of index or first finger (one phalanx) shall be
174 considered a six percent disability.

175 The loss of index or first finger shall be considered a ten
176 percent disability.

177 The loss of thumb (one phalanx) shall be considered a
178 twelve percent disability.

179 The loss of thumb shall be considered a twenty percent
180 disability.

181 The loss of thumb and index fingers shall be considered
182 a thirty-two percent disability.

183 The loss of index and middle fingers shall be considered
184 a twenty percent disability.

185 The loss of middle and ring fingers shall be considered a
186 fifteen percent disability.

187 The loss of ring and little fingers shall be considered a
188 ten percent disability.

189 The loss of thumb, index and middle fingers shall be
190 considered a forty percent disability.

191 The loss of index, middle and ring fingers shall be
192 considered a thirty percent disability.

193 The loss of middle, ring and little fingers shall be
194 considered a twenty percent disability.

195 The loss of four fingers shall be considered a thirty-two
196 percent disability.

197 The loss of hand shall be considered a fifty percent
198 disability.

199 The loss of forearm shall be considered a fifty-five
200 percent disability.

201 The loss of arm shall be considered a sixty percent
202 disability.

203 The total and irrecoverable loss of the sight of one eye
204 shall be considered a thirty-three percent disability. For
205 the partial loss of vision in one or both eyes, the percent-
206 ages of disability shall be determined by the commission,
207 using as a basis the total loss of one eye.

208 The total and irrecoverable loss of the hearing of one ear
209 shall be considered a twenty-two and one-half percent
210 disability. The total and irrecoverable loss of hearing of
211 both ears shall be considered a fifty-five percent disability.

212 For the partial loss of hearing in one or both ears, the
213 percentage of disability shall be determined by the com-
214 mission, successor to the commission, other private carrier
215 or self-insured employer, whichever is applicable, using as
216 a basis the total loss of hearing in both ears.

217 If a claimant sustains a compensable injury which
218 results in the total loss by severance of any of the bodily
219 members named in this subdivision or dies from sickness
220 or noncompensable injury before the commission makes
221 the proper award for the injury, the commission shall
222 make the award to the claimant's dependents as defined in
223 this chapter, if any; the payment to be made in the same
224 installments that would have been paid to claimant if
225 living: *Provided*, That no payment shall be made to any
226 surviving spouse of the claimant after his or her remar-
227 riage and that this liability shall not accrue to the estate of
228 the claimant and is not subject to any debts of, or charges
229 against, the estate.

230 (g) If a claimant to whom has been made a permanent
231 partial award dies from sickness or noncompensable
232 injury, the unpaid balance of the award shall be paid to
233 claimant's dependents as defined in this chapter, if any;
234 the payment to be made in the same installments that
235 would have been paid to claimant if living: *Provided*, That
236 no payment shall be made to any surviving spouse of the
237 claimant after his or her remarriage, and that this liability
238 shall not accrue to the estate of the claimant and is not
239 subject to any debts of, or charges against, such estate.

240 (h) For the purposes of this chapter, a finding of the
241 occupational pneumoconiosis board has the force and
242 effect of an award.

243 (i) For the purposes of this chapter, with the exception of
244 those injuries provided for in subdivision (f) of this section
245 and in section six-b of this article, the degree of permanent
246 disability other than permanent total disability shall be
247 determined exclusively by the degree of whole body
248 medical impairment that a claimant has suffered. For
249 those injuries provided for in subdivision (f) of this section
250 and section six-b of this article, the degree of disability
251 shall be determined exclusively by the provisions of said
252 subdivision and said section. The occupational pneumoco-
253 niosis board created pursuant to section eight-a of this
254 article shall premise its decisions on the degree of pulmo-
255 nary function impairment that claimants suffer solely
256 upon whole body medical impairment. The workers'
257 compensation commission shall adopt standards for the
258 evaluation of claimants and the determination of a claim-
259 ant's degree of whole body medical impairment. Once the
260 degree of medical impairment has been determined, that
261 degree of impairment shall be the degree of permanent
262 partial disability that shall be awarded to the claimant.
263 This subdivision is applicable to all injuries incurred and
264 diseases with a date of last exposure on or after the second
265 day of February, one thousand nine hundred ninety-five,
266 to all applications for an award of permanent partial

267 disability made on and after that date and to all applica-
268 tions for an award of permanent partial disability that
269 were pending before the commission or pending in litiga-
270 tion but not yet submitted for decision on and after that
271 date. The prior provisions of this subdivision remain in
272 effect for all other claims.

273 (j) From a list of names of seven persons submitted to the
274 executive director by the health care advisory panel, the
275 executive director shall appoint an interdisciplinary
276 examining board consisting of five members to evaluate
277 claimants, including by examination if the board elects.
278 The interdisciplinary examining board shall terminate
279 upon termination of the commission and all administrative
280 and adjudicatory functions performed by the interdisci-
281 plinary examining board shall be performed by the
282 following reviewing bodies for those claims over which
283 they have administrative jurisdiction: (1) The insurance
284 commissioner or his or her designated administrator of
285 each of the funds set forth in this chapter; (2) private
286 carriers; or (3) self-insured employers. The reviewing
287 bodies shall employ or otherwise engage adequate re-
288 sources, including medical professionals, to perform the
289 functions of the interdisciplinary examining board. The
290 board shall be composed of three qualified physicians with
291 specialties and expertise qualifying them to evaluate
292 medical impairment and two vocational rehabilitation
293 specialists who are qualified to evaluate the ability of a
294 claimant to perform gainful employment with or without
295 retraining. One member of the board shall be designated
296 annually as chairperson by the executive director. The
297 term of office of each member of the board shall be six
298 years and until his or her successor has been appointed
299 and has qualified. Any member of the board may be
300 appointed to any number of terms. Any two physician
301 members and one vocational rehabilitation specialist
302 member shall constitute a quorum for the transaction of
303 business. The executive director, from time to time, shall
304 fix the compensation to be paid to each member of the

305 board, and the members are also entitled to reasonable and
306 necessary traveling and other expenses incurred while
307 actually engaged in the performance of their duties. The
308 board shall perform the duties and responsibilities as-
309 signed by the provisions of this chapter, consistent with
310 the administrative policies developed by the executive
311 director with the approval of the board of managers.

312 (1) The executive director shall establish requirements
313 for the proper completion and support for an application
314 for permanent total disability benefits within an existing
315 or a new rule no later than the first day of January, two
316 thousand four. Upon adoption of the rule by the board of
317 managers, no issue of permanent total disability may be
318 referred to the interdisciplinary examining board, or, any
319 other reviewing body, unless a properly completed and
320 supported application for permanent total disability
321 benefits has been first filed. Prior to the referral of any
322 issue to the interdisciplinary examining board, or, upon its
323 termination, prior to a reviewing body's adjudication of a
324 permanent total disability application, the commission, or
325 reviewing body shall conduct examinations of the claim-
326 ant that it finds necessary and obtain all pertinent records
327 concerning the claimant's medical history and reports of
328 examinations and forward them to the board at the time
329 of the referral. The commission or reviewing body shall
330 provide adequate notice to the employer of the filing of the
331 request for a permanent total disability award and the
332 employer shall be granted an appropriate period in which
333 to respond to the request. The claimant and the employer
334 may furnish all pertinent information to the board or other
335 reviewing body and shall furnish to the board or other
336 reviewing body any information requested. The claimant
337 and the employer may each submit no more than one
338 report and opinion regarding each issue present in a given
339 claim. The employer may have the claimant examined by
340 medical specialists and vocational rehabilitation special-
341 ists: *Provided*, That the employer is entitled to only one
342 examination on each issue present in a given claim. Any

343 additional examinations must be approved by the commis-
344 sion or other reviewing body and shall be granted only
345 upon a showing of good cause. The reports from all
346 employer-conducted examinations must be filed with the
347 board or other reviewing body and served upon the
348 claimant. The board or other reviewing body may request
349 that those persons who have furnished reports and opin-
350 ions regarding a claimant provide it with additional
351 information considered necessary. Both the claimant and
352 the employer, as well as the commission, or other review-
353 ing body may submit or obtain reports from experts
354 challenging or supporting the other reports in the record
355 regardless of whether or not the expert examined the
356 claimant or relied solely upon the evidence of record.

357 (2) If the board or a quorum of the board elects to
358 examine a claimant, the individual members shall conduct
359 any examinations that are pertinent to each of their
360 specialties. If a claim presents an issue beyond the exper-
361 tise of the board, the board may obtain advice or evalua-
362 tions by other specialists. In addition, if the board of
363 managers determines that the number of applications
364 pending before the interdisciplinary examining board has
365 exceeded the level at which the board can review and
366 make recommendations within a reasonable time, the
367 board of managers may authorize the executive director to
368 appoint any additional members to the board that are
369 necessary to reduce the backlog of applications. The
370 additional members shall be recommended by the health
371 care advisory panel. The executive director may make any
372 appointments he or she chooses from the recommenda-
373 tions. The additional board members shall not serve a set
374 term but shall serve until the board of managers deter-
375 mines that the number of pending applications has been
376 reduced to an acceptable level.

377 (3) Referrals to the board shall be limited to matters
378 related to the determination of permanent total disability
379 under the provisions of subdivision (n) of this section and

380 to questions related to medical cost containment, utiliza-
381 tion review decisions and managed care decisions arising
382 under section three of this article.

383 (4) In the event the board members or other reviewing
384 body elects to examine a claimant, the board or other
385 reviewing body shall prepare a report stating the tests,
386 examinations, procedures and other observations that
387 were made, the manner in which each was conducted and
388 the results of each. The report shall state the findings
389 made by the board or other reviewing body and the
390 reasons for the findings. Copies of the reports of all
391 examinations made by the board or other reviewing body
392 shall be served upon the parties and the commission until
393 its termination. Each shall be given an opportunity to
394 respond in writing to the findings and conclusions stated
395 in the reports.

396 (5) The board or other reviewing body shall state its
397 initial recommendations to the commission in writing with
398 an explanation for each recommendation setting forth the
399 reasons for each. The recommendations shall be served
400 upon the parties and the commission and each shall be
401 afforded a thirty-day opportunity to respond in writing to
402 the board or other reviewing body regarding its recom-
403 mendations. The board or other reviewing body shall
404 review any responses and issue its final recommendations.
405 The final recommendations shall be effectuated by the
406 entry of an appropriate order by the commission, or, upon
407 its termination, the private carrier or self-insured em-
408 ployer. For all awards for permanent total disability
409 where the claim was filed on or after the effective date of
410 the amendment and reenactment of this section in the year
411 two thousand three, the commission or other reviewing
412 body shall establish the date of onset of the claimant's
413 permanent total disability as the date when a properly
414 completed and supported application for permanent total
415 disability benefits as prescribed in subdivision (1) of this
416 subsection that results in a finding of permanent total

417 disability was filed with the commission or other review-
418 ing body: *Provided*, That upon notification of the commis-
419 sion or other reviewing body by a claimant or his or her
420 representative that the claimant seeks to be evaluated for
421 permanent total disability, the commission or other
422 reviewing body shall send the claimant or his or her
423 representative the proper application form. The commis-
424 sion or other reviewing body shall set time limits for the
425 return of the application. A properly completed and
426 supported application returned within the time limits set
427 by the commission or other reviewing body shall be
428 treated as if received on the date the commission or other
429 reviewing body was notified the claimant was seeking
430 evaluation for permanent total disability: *Provided*,
431 *however*, That notwithstanding any other provision of this
432 section to the contrary, the onset date may not be sooner
433 than the date upon which the claimant meets the percent-
434 age thresholds of prior permanent partial disability that
435 are established by subsection (n) of this section as a
436 prerequisite to the claimant's qualification for consider-
437 ation for a permanent total disability award.

438 (6) Except as noted below, objections pursuant to section
439 one, article five of this chapter to any order shall be
440 limited in scope to matters within the record developed
441 before the workers' compensation commission and the
442 board or other reviewing body and shall further be limited
443 to the issue of whether the board or other reviewing body
444 properly applied the standards for determining medical
445 impairment, if applicable, and the issue of whether the
446 board's findings are clearly wrong in view of the reliable,
447 probative and substantial evidence on the whole record.
448 The preponderance of the evidence set forth in article one
449 of this chapter shall apply to decisions made by reviewing
450 bodies other than the commission instead of the clearly
451 wrong standard. If either party contends that the claim-
452 ant's condition has changed significantly since the review
453 conducted by the board or other reviewing body, the party
454 may file a motion with the administrative law judge,

455 together with a report supporting that assertion. Upon the
456 filing of the motion, the administrative law judge shall
457 cause a copy of the report to be sent to the examining
458 board or other reviewing body asking the board to review
459 the report and provide comments if the board chooses
460 within sixty days of the board's receipt of the report. The
461 board or other reviewing body may either supply com-
462 ments or, at the board's or other reviewing body's discre-
463 tion, request that the claim be remanded to the board for
464 further review. If remanded, the claimant is not required
465 to submit to further examination by the employer's
466 medical specialists or vocational rehabilitation specialists.
467 Following the remand, the board or other reviewing body
468 shall file its recommendations with the administrative law
469 judge for his or her review. If the board or other reviewing
470 body elects to respond with comments, the comments shall
471 be filed with the administrative law judge for his or her
472 review. Following the receipt of either the board's or other
473 reviewing body's recommendations or comments, the
474 administrative law judge shall issue a written decision
475 ruling upon the asserted change in the claimant's condi-
476 tion. No additional evidence may be introduced during the
477 review of the objection before the office of judges or
478 elsewhere on appeal: *Provided*, That each party and the
479 commission may submit one written opinion on each issue
480 pertinent to a given claim based upon a review of the
481 evidence of record either challenging or defending the
482 board's or other reviewing body's findings and conclu-
483 sions. Thereafter, based upon the evidence of record, the
484 administrative law judge shall issue a written decision
485 containing his or her findings of fact and conclusions of
486 law regarding each issue involved in the objection. The
487 limitation of the scope of review otherwise provided in this
488 subsection is not applicable upon termination of the
489 commission and any objections shall be subject to article
490 five of this chapter in its entirety.

491 (k) Compensation payable under any subdivision of this
492 section shall not exceed the maximum nor be less than the
493 weekly benefits specified in subdivision (b) of this section.

494 (l) Except as otherwise specifically provided in this
495 chapter, temporary total disability benefits payable under
496 subdivision (b) of this section shall not be deductible from
497 permanent partial disability awards payable under
498 subdivision (e) or (f) of this section. Compensation, either
499 temporary total or permanent partial, under this section
500 shall be payable only to the injured employee and the right
501 to the compensation shall not vest in his or her estate,
502 except that any unpaid compensation which would have
503 been paid or payable to the employee up to the time of his
504 or her death, if he or she had lived, shall be paid to the
505 dependents of the injured employee if there are any
506 dependents at the time of death.

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

509 Loss of both eyes or the sight thereof.

510 Loss of both hands or the use thereof.

511 Loss of both feet or the use thereof.

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

513 (n) (1) Other than for those injuries specified in subdivi-
514 sion (m) of this section, in order to be eligible to apply for
515 an award of permanent total disability benefits for all
516 injuries incurred and all diseases, including occupational
517 pneumoconiosis, regardless of the date of last exposure, on
518 and after the effective date of the amendment and
519 reenactment of this section during the year two thousand
520 three, a claimant: (A) Must have been awarded the sum of
521 fifty percent in prior permanent partial disability awards;
522 (B) must have suffered a single occupational injury or
523 disease which results in a finding by the commission that
524 the claimant has suffered a medical impairment of fifty
525 percent; or (C) has sustained a thirty-five percent statutory
526 disability pursuant to the provisions of subdivision (f) of
527 this section. Upon filing an application, the claim will be
528 reevaluated by the examining board or other reviewing

529 body pursuant to subdivision (i) of this section to deter-
530 mine if the claimant has suffered a whole body medical
531 impairment of fifty percent or more resulting from either
532 a single occupational injury or occupational disease or a
533 combination of occupational injuries and occupational
534 diseases or has sustained a thirty-five percent statutory
535 disability pursuant to the provisions of subdivision (f) of
536 this section. A claimant whose prior permanent partial
537 disability awards total eighty-five percent or more shall
538 also be examined by the board or other reviewing body
539 and must be found to have suffered a whole body medical
540 impairment of fifty percent in order for his or her request
541 to be eligible for further review. The examining board or
542 other reviewing body shall review the claim as provided
543 for in subdivision (j) of this section. If the claimant has
544 not suffered whole body medical impairment of at least
545 fifty percent or has sustained a thirty-five percent statu-
546 tory disability pursuant to the provisions of subdivision (f)
547 of this section, the request shall be denied. Upon a finding
548 that the claimant has a fifty percent whole body medical
549 impairment or has sustained a thirty-five percent statu-
550 tory disability pursuant to the provisions of subdivision (f)
551 of this section, the review of the application continues as
552 provided for in the following paragraph of this subdivi-
553 sion. Those claimants whose prior permanent partial
554 disability awards total eighty-five percent or more and
555 who have been found to have a whole body medical
556 impairment of at least fifty percent or have sustained a
557 thirty-five percent statutory disability pursuant to the
558 provisions of subdivision (f) of this section are entitled to
559 the rebuttable presumption created pursuant to subdivi-
560 sion (d) of this section for the remaining issues in the
561 request.

562 (2) For all awards made on or after the effective date of
563 the amendment and reenactment of this section during the
564 year two thousand three, disability which renders the
565 injured employee unable to engage in substantial gainful
566 activity requiring skills or abilities which can be acquired

567 or which are comparable to those of any gainful activity in
568 which he or she has previously engaged with some regular-
569 ity and over a substantial period of time shall be consid-
570 ered in determining the issue of total disability. The
571 comparability of preinjury income to post-disability
572 income will not be a factor in determining permanent total
573 disability. Geographic availability of gainful employment
574 within a driving distance of seventy-five miles from the
575 residence of the employee or within the distance from the
576 residence of the employee to his or her preinjury employ-
577 ment, whichever is greater, will be a factor in determining
578 permanent total disability. For any permanent total
579 disability award made after the amendment and
580 reenactment of this section in the year two thousand three,
581 permanent total disability benefits shall cease at age
582 seventy years. In addition, the vocational standards
583 adopted pursuant to subsection (m), section seven, article
584 three of this chapter shall be considered once they are
585 effective.

586 (3) In the event that a claimant, who has been found to
587 have at least a fifty percent whole body medical impair-
588 ment or has sustained a thirty-five percent statutory
589 disability pursuant to the provisions of subdivision (f) of
590 this section, is denied an award of permanent total disabili-
591 ty benefits pursuant to this subdivision and accepts and
592 continues to work at a lesser paying job than he or she
593 previously held, the claimant is eligible, notwithstanding
594 the provisions of section nine of this article, to receive
595 temporary partial rehabilitation benefits for a period of
596 four years. The benefits shall be paid at the level neces-
597 sary to ensure the claimant's receipt of the following
598 percentages of the average weekly wage earnings of the
599 claimant at the time of injury calculated as provided in
600 this section and sections six-d and fourteen of this article:

601 (A) Eighty percent for the first year;

602 (B) Seventy percent for the second year;

603 (C) Sixty percent for the third year; and

604 (D) Fifty percent for the fourth year: *Provided*, That in
605 no event shall the benefits exceed one hundred percent of
606 the average weekly wage in West Virginia. In no event
607 shall the benefits be subject to the minimum benefit
608 amounts required by the provisions of subdivision (b) of
609 this section.

610 (4) Notwithstanding any provision of this subsection,
611 subsection (a) of this section or any other provision of this
612 code to the contrary, on any claim filed on or after the
613 effective date of the amendment and reenactment of this
614 section in the year two thousand three:

615 (A) No percent of whole body medical impairment
616 existing as the result of carpal tunnel syndrome for which
617 a claim has been made under this chapter may be included
618 in the aggregation of permanent disability under the
619 provisions of this subsection or subsection (d) of this
620 section; and

621 (B) No percent of whole body medical impairment
622 existing as the result of any occupational disease, the
623 diagnosis of which is based solely upon symptoms rather
624 than specific, objective and measurable medical findings,
625 and for which a claim has been made under this chapter
626 may be included in the aggregation of permanent disabili-
627 ty under the provisions of this subsection or subsection (d)
628 of this section.

629 (o) To confirm the ongoing permanent total disability
630 status of the claimant, the commission, successor to the
631 commission, other private carrier or self-insured employer,
632 whichever is applicable, may elect to have any recipient of
633 a permanent total disability award undergo one independ-
634 ent medical examination during each of the first five years
635 that the permanent total disability award is paid and one
636 independent medical examination during each three-year
637 period thereafter until the claimant reaches the age of

638 seventy years: *Provided*, That the commission, successor to
639 the commission, other private carrier or self-insured
640 employer, whichever is applicable, may elect to have any
641 recipient of a permanent total disability award under the
642 age of fifty years undergo one independent medical
643 examination during each year that the permanent total
644 disability award is paid until the recipient reaches the age
645 of fifty years, and thereafter one independent medical
646 examination during each three-year period thereafter until
647 the claimant reaches the age of seventy years.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

1 If an employee is found to be permanently disabled due
2 to occupational pneumoconiosis, as defined in section one
3 of this article, the percentage of permanent disability is
4 determined by the degree of medical impairment that is
5 found by the occupational pneumoconiosis board. The
6 commission, successor to the commission, other private
7 carrier or self-insured employer, whichever is applicable,
8 shall enter an order setting forth the findings of the
9 occupational pneumoconiosis board with regard to
10 whether the claimant has occupational pneumoconiosis
11 and the degree of medical impairment, if any, resulting
12 therefrom. That order is the final decision of the commis-
13 sion for purposes of section one, article five of this chapter.
14 If a decision is objected to, the office of judges shall affirm
15 the decision of the occupational pneumoconiosis board
16 made following hearing unless the decision is clearly
17 wrong in view of the reliable, probative and substantial
18 evidence on the whole record. Compensation is paid
19 therefor in the same manner and at the same rate as is
20 provided for permanent disability under the provisions of
21 subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n), section
22 six of this article: *Provided*, That for any employee who
23 applies for occupational pneumoconiosis benefits whose

24 award was granted on or after the effective date of the
25 amendment and reenactment of this section during the
26 year two thousand three, there shall be no permanent
27 partial disability awarded based solely upon a diagnosis of
28 occupational pneumoconiosis, it being the intent of the
29 Legislature to eliminate any permanent partial disability
30 awards for occupational pneumoconiosis without a
31 specific finding of measurable impairment.

32 If the employee dies from occupational pneumoconiosis,
33 the benefits shall be as provided for in section ten of this
34 article; as to the benefits, sections eleven to fourteen,
35 inclusive, of this article apply.

36 In cases of permanent disability or death due to occupa-
37 tional pneumoconiosis, as defined in section one of this
38 article, accompanied by active tuberculosis of the lungs,
39 compensation shall be payable as for disability or death
40 due to occupational pneumoconiosis alone.

41 The provisions of section sixteen of this article and
42 sections two, three, four and five, article five of this
43 chapter providing for the further adjustment of claims are
44 applicable to the claim of any claimant who receives a
45 permanent partial disability award for occupational
46 pneumoconiosis.

§23-4-6b. Occupational hearing loss claims.

1 (a) In all claims for occupational hearing loss caused by
2 either a single incident of trauma or by exposure to
3 hazardous noise in the course of and resulting from
4 employment, the degree of permanent partial disability, if
5 any, shall be determined in accordance with the provisions
6 of this section and awards made in accordance with the
7 provisions of section six of this article.

8 (b) The percent of permanent partial disability for a
9 monaural hearing loss shall be computed in the following
10 manner:

11 (1) The measured decibel loss of hearing due to injury at
12 the sound frequencies of five hundred, one thousand, two
13 thousand and three thousand hertz shall be determined for
14 the injured ear and the total shall be divided by four to
15 ascertain the average decibel loss;

16 (2) The percent of monaural hearing impairment for the
17 injured ear shall be calculated by multiplying by one and
18 six-tenths percent the difference by which the aforemen-
19 tioned average decibel loss exceeds twenty-seven and one-
20 half decibels, up to a maximum of one hundred percent
21 hearing impairment, which maximum is reached at ninety
22 decibels; and

23 (3) The percent of monaural hearing impairment ob-
24 tained shall be multiplied by twenty-two and one-half to
25 ascertain the degree of permanent partial disability.

26 (c) The percent of permanent partial disability for a
27 binaural hearing loss shall be computed in the following
28 manner:

29 (1) The measured decibel loss of hearing due to injury at
30 the sound frequencies of five hundred, one thousand, two
31 thousand and three thousand hertz is determined for each
32 ear and the total for each ear shall be divided by four to
33 ascertain the average decibel loss for each ear;

34 (2) The percent of hearing impairment for each ear is
35 calculated by multiplying by one and six-tenths percent
36 the difference by which the aforementioned average
37 decibel loss exceeds twenty-seven and one-half decibels,
38 up to a maximum of one hundred percent hearing impair-
39 ment, which maximum is reached at ninety decibels;

40 (3) The percent of binaural hearing impairment shall be
41 calculated by multiplying the smaller percentage (better
42 ear) by five, adding this figure to the larger percentage
43 (poorer ear) and dividing the sum by six; and

44 (4) The percent of binaural hearing impairment obtained
45 shall be multiplied by fifty-five to ascertain the degree of
46 permanent partial disability.

47 (d) No permanent partial disability benefits shall be
 48 granted for tinnitus, psychogenic hearing loss, recruitment
 49 or hearing loss above three thousand hertz.

50 (e) An additional amount of permanent partial disability
 51 shall be granted for impairment of speech discrimination,
 52 if any, to determine the additional amount for binaural
 53 impairment, the percentage of speech discrimination in
 54 each ear shall be added together and the result divided by
 55 two to calculate the average percentage of speech discrim-
 56 ination, and the permanent partial disability shall be
 57 ascertained by reference to the percentage of permanent
 58 partial disability in the table below on the line with the
 59 percentage of speech discrimination obtained. To deter-
 60 mine the additional amount for monaural impairment, the
 61 permanent partial disability shall be ascertained by
 62 reference to the percentage of permanent partial disability
 63 in the table below on the line with the percentage of
 64 speech discrimination in the injured ear.

65

66 TABLE

66 % Of Speech Discrimination	% of Permanent Partial Disability
67 90% . . . and up to and including.....	100% 0%
68 80% . . . and up to but not including.....	90% 1%
69 70% . . . and up to but not including.....	80% 3%
70 60% . . . and up to but not including.....	70% 4%
71 0% . . . and up to but not including.....	60% 5%

72 (f) No temporary total disability benefits shall be
 73 granted for noise-induced hearing loss.

74 (g) An application for benefits alleging a noise-induced
 75 hearing loss shall set forth the name of the employer or
 76 employers and the time worked for each. The commission
 77 shall allocate to and divide any charges resulting from the
 78 claim among the employers with whom the claimant
 79 sustained exposure to hazardous noise for as much as sixty
 80 days during the period of three years immediately preced-
 81 ing the date of last exposure. The allocation is based upon

82 the time of exposure with each employer. In determining
83 the allocation, the commission shall consider all the time
84 of employment by each employer during which the claim-
85 ant was exposed and not just the time within the three-
86 year period under the same allocation as is applied in
87 occupational pneumoconiosis cases.

88 (h) The commission shall provide, consistent with
89 current practice, for prompt referral the claims for evalua-
90 tion, for all medical reimbursement and for prompt
91 authorization of hearing enhancement deviccs.

92 (i) The provisions of this section and the amendments to
93 section six of this article insofar as applicable to perma-
94 nent partial disabilities for hearing loss are operative as to
95 any claim filed after thirty days from the effective date of
96 this section.

97 (j) Effective upon termination of the commission, the
98 administrative duties governing hearing loss claims shall
99 transfer to the insurance commissioner.

§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

1 (a) The Legislature hereby finds and declares that two of
2 the primary objectives of the workers' compensation
3 system established by this chapter are to provide benefits
4 to an injured claimant promptly and to effectuate his or
5 her return to work at the earliest possible time; that the
6 prompt dissemination of medical information to the
7 commission and employer as to diagnosis, treatment and
8 recovery is essential if these two objectives are to be
9 achieved; that claimants are increasingly burdened with
10 the task of contacting their treating physicians to request
11 the furnishing of detailed medical information to the
12 commission and their employers; that the commission is
13 increasingly burdened with the administrative responsibil-
14 ity of providing copies of medical reports to the employer

15 involved, whereas in other states the employer can obtain
16 the necessary medical information direct from the treating
17 physician; that much litigation is occasioned in this state
18 because of a lack of medical information having been
19 received by the employer as to the continuing disability of
20 a claimant; and that detailed narrative reports from the
21 treating physician are often necessary in order for the
22 commission, the claimant's representatives and the
23 employer to evaluate a claim and determine whether
24 additional or different treatment is indicated.

25 (b) In view of the foregoing findings, a claimant irrevocably agrees by the filing of his or her application for
26 benefits that any physician may release to and orally
27 discuss with the claimant's employer, or its representative,
28 or with a representative of the commission, successor to
29 the commission, other private carrier or self-insured
30 employer, whichever is applicable, from time to time, the
31 claimant's medical history and any medical reports
32 pertaining to the occupational injury or disease and to any
33 prior injury or disease of the portion of the claimant's
34 body to which a medical impairment is alleged containing
35 detailed information as to the claimant's condition,
36 treatment, prognosis and anticipated period of disability
37 and dates as to when the claimant will reach or has
38 reached his or her maximum degree of improvement or
39 will be or was released to return to work. For the exclusive purposes of this chapter, the patient-physician
40 privilege of confidentiality is waived with regard to the
41 physician's providing this medical information to the
42 commission, the employer or to the employer's representative. Whenever a copy of any medical report is obtained
43 by the employer or its representative and the physician has
44 not also forwarded a copy of the medical report to the
45 commission, successor to the commission, other private
46 carrier or self-insured employer, whichever is applicable,
47 the employer shall forward a copy of the medical report to
48 the commission, successor to the commission, other private
49 carrier or self-insured employer, whichever is applicable,
50
51
52

53 within ten days from the date the employer received the
54 medical report from the physician.

**§23-4-7a. Monitoring of injury claims; legislative findings;
review of medical evidence; recommendation of
authorized treating physician; independent medi-
cal evaluations; temporary total disability benefits
and the termination thereof; mandatory action;
additional authority; suspension of benefits.**

1 (a) The Legislature hereby finds and declares that
2 injured claimants should receive the type of treatment
3 needed as promptly as possible; that overpayments of
4 benefits with the resultant hardship created by the re-
5 quirement of repayment should be minimized; and that to
6 achieve these two objectives it is essential that the com-
7 mission establish and operate a systematic program for the
8 monitoring of injury claims where the disability continues
9 longer than might ordinarily be expected.

10 (b) In view of the foregoing findings, the commission, in
11 consultation with the health care advisory panel, shall
12 establish guidelines as to the anticipated period of disabil-
13 ity for the various types of injuries. Each injury claim in
14 which temporary total disability continues beyond the
15 anticipated period of disability established for the injury
16 involved shall be reviewed by the commission. If satisfied,
17 after reviewing the medical evidence, that the claimant
18 would not benefit by an independent medical evaluation,
19 the commission shall mark the claim file accordingly and
20 shall diary the claim file as to the next date for required
21 review which shall not exceed sixty days. If the commis-
22 sion concludes that the claimant might benefit by an
23 independent medical evaluation, the commission shall
24 proceed as specified in subsections (d) and (e) of this
25 section.

26 (c) When the authorized treating physician concludes
27 that the claimant has either reached his or her maximum
28 degree of improvement or is ready for disability evalua-

29 tion, or when the claimant has returned to work, the
30 authorized treating physician may recommend a perma-
31 nent partial disability award for residual impairment
32 relating to and resulting from the compensable injury, and
33 the following provisions govern and control:

34 (1) If the authorized treating physician recommends a
35 permanent partial disability award of fifteen percent or
36 less, the commission shall enter an award of permanent
37 partial disability benefits based upon the recommendation
38 and all other available information. The claimant's
39 entitlement to temporary total disability benefits ceases
40 upon the entry of the award unless previously terminated
41 under the provisions of subsection (e) of this section.

42 (2) If, however, the authorized treating physician
43 recommends a permanent partial disability award in
44 excess of fifteen percent, or recommends a permanent total
45 disability award, the claimant's entitlement to temporary
46 total disability benefits ceases upon the receipt by the
47 commission, successor to the commission, other private
48 carrier or self-insured employer, whichever is applicable,
49 of the medical report. The commission, successor to the
50 commission, other private carrier or self-insured employer,
51 whichever is applicable, shall refer the claimant to a
52 physician or physicians of its selection for independent
53 evaluation prior to the entry of a permanent disability
54 award: *Provided*, That unless the claimant has returned to
55 work, the claimant shall thereupon receive benefits which
56 shall be at the permanent partial disability rate as pro-
57 vided in subdivision (e), section six of this article until the
58 entry of a permanent disability award or until the claim-
59 ant returns to work. The amount of benefits paid prior to
60 the receipt of the independent evaluation report shall be
61 considered and determined to be payment of the perma-
62 nent disability award granted, if any. In the event that
63 benefits actually paid exceed the amount granted by the
64 permanent partial disability award, the claimant is
65 entitled to no further benefits by the award and the excess
66 paid shall be an overpayment. For all awards made or

67 nonawarded partial benefits paid the commission, succes-
68 sor to the commission, other private carrier or self-insured
69 employer, whichever is applicable, may only recover the
70 amount of overpaid benefits or expenses by withholding,
71 in whole or in part, future disability benefits payable to
72 the individual in the same or other claims and credit the
73 amount against the overpayment until it is repaid in full.

74 (d) When the commission, successor to the commission,
75 other private carrier or self-insured employer, whichever
76 is applicable, concludes that an independent medical
77 evaluation is indicated, or that a claimant may be ready
78 for disability evaluation in accordance with other provi-
79 sions of this chapter, the commission, successor to the
80 commission, other private carrier or self-insured employer,
81 whichever is applicable, shall refer the claimant to a
82 physician or physicians of its selection for examination
83 and evaluation. If the physician or physicians selected
84 recommend continued, additional or different treatment,
85 the recommendation shall be relayed to the claimant and
86 the claimant's treating physician and the recommended
87 treatment may be authorized by the commission, successor
88 to the commission, other private carrier or self-insured
89 employer, whichever is applicable.

90 (e) Notwithstanding any provision in subsection (c) of
91 this section, the commission, successor to the commission,
92 other private carrier or self-insured employer, whichever
93 is applicable, shall enter a notice suspending the payment
94 of temporary total disability benefits but providing a
95 reasonable period of time during which the claimant may
96 submit evidence justifying the continued payment of
97 temporary total disability benefits when:

98 (1) The physician or physicians selected by the commis-
99 sion conclude that the claimant has reached his or her
100 maximum degree of improvement;

101 (2) When the authorized treating physician advises the
102 commission, successor to the commission, other private
103 carrier or self-insured employer, whichever is applicable,

104 that the claimant has reached his or her maximum degree
105 of improvement or that he or she is ready for disability
106 evaluation and when the authorized treating physician has
107 not made any recommendation with respect to a perma-
108 nent disability award as provided in subsection (c) of this
109 section;

110 (3) When other evidence submitted to the commission,
111 successor to the commission, other private carrier or self-
112 insured employer, whichever is applicable, justifies a
113 finding that the claimant has reached his or her maximum
114 degree of improvement; or

115 (4) When other evidence submitted or otherwise obtained
116 justifies a finding that the claimant has engaged or is
117 engaging in abuse, including, but not limited to, physical
118 activities inconsistent with his or her compensable work-
119 ers' compensation injury.

120 In all cases, a finding by the commission, successor to
121 the commission, other private carrier or self-insured
122 employer, whichever is applicable, that the claimant has
123 reached his or her maximum degree of improvement
124 terminates the claimant's entitlement to temporary total
125 disability benefits regardless of whether the claimant has
126 been released to return to work. Under no circumstances
127 shall a claimant be entitled to receive temporary total
128 disability benefits either beyond the date the claimant is
129 released to return to work or beyond the date he or she
130 actually returns to work.

131 In the event that the medical or other evidence indicates
132 that claimant has a permanent disability, unless he or she
133 has returned to work, the claimant shall thereupon receive
134 benefits which shall be at the permanent partial disability
135 rate as provided in subdivision (e), section six of this
136 article until entry of a permanent disability award,
137 pursuant to an evaluation by a physician or physicians
138 selected by the commission, successor to the commission,
139 other private carrier or self-insured employer, whichever

140 is applicable, or until the claimant returns to work. The
141 amount of benefits shall be considered and determined to
142 be payment of the permanent disability award granted, if
143 any. In the event that benefits actually paid exceed the
144 amount granted under the permanent disability award, the
145 claimant is entitled to no further benefits by the order.

146 (f) Notwithstanding the anticipated period of disability
147 established pursuant to the provisions of subsection (b) of
148 this section, whenever in any claim temporary total
149 disability continues longer than one hundred twenty days
150 from the date of injury (or from the date of the last
151 preceding examination and evaluation pursuant to the
152 provisions of this subsection or pursuant to the directions
153 of the commission under other provisions of this chapter),
154 the commission, successor to the commission, other private
155 carrier or self-insured employer, whichever is applicable,
156 shall refer the claimant to a physician or physicians of the
157 commission's selection for examination and evaluation in
158 accordance with the provisions of subsection (d) of this
159 section and the provisions of subsection (e) of this section
160 are fully applicable: *Provided*, That the requirement of
161 mandatory examinations and evaluations pursuant to the
162 provisions of this subsection shall not apply to any claim-
163 ant who sustained a brain stem or spinal cord injury with
164 resultant paralysis or an injury which resulted in an
165 amputation necessitating a prosthetic appliance.

166 (g) The provisions of this section are in addition to and
167 in no way in derogation of the power and authority vested
168 in the commission, successor to the commission, other
169 private carrier or self-insured employer, whichever is
170 applicable, by other provisions of this chapter or vested in
171 the employer to have a claimant examined by a physician
172 or physicians of the employer's selection and at the em-
173 ployer's expense, or vested in the claimant or employer to
174 file a protest, under other provisions of this chapter.

175 (h) All evaluations and examinations performed by
176 physicians shall be performed in accordance with the

177 protocols and procedures established by the health care
178 advisory panel pursuant to section three-b of this article:
179 *Provided*, That the physician may exceed these protocols
180 when additional evaluation is medically necessary.

181 (i) The commission, successor to the commission, other
182 private carrier or self-insured employer, whichever is
183 applicable, may suspend benefits being paid to a claimant
184 if the claimant refuses, without good cause, to undergo the
185 examinations or needed treatments provided for in this
186 section until the claimant submits to the examination or
187 needed treatments. The executive director shall propose
188 rules for approval by the commission to implement the
189 provisions of this subsection.

§23-4-7b. Trial return to work.

1 (a) The Legislature hereby finds and declares that it is in
2 the interest of employees, employers and the commission
3 that injured employees be encouraged to return to work as
4 quickly as possible after an injury and that appropriate
5 protections be afforded to injured employees who return
6 to work on a trial basis.

7 (b) Notwithstanding any other provisions of this chapter
8 to the contrary, the injured employee shall not have his or
9 her eligibility to receive temporary total disability benefits
10 terminated when he or she returns to work on a trial basis
11 as set forth in this section. An employee is eligible to
12 return to work on a trial basis when he or she is released
13 to work on a trial basis by the treating physician.

14 (c) When an injured employee returns to work on a trial
15 basis, the employer shall provide a trial return-to-work
16 notification to the commission. Upon receipt of the
17 notification, the commission shall note the date of the first
18 day of work pursuant to the trial return and shall continue
19 the claimant's eligibility for temporary total disability
20 benefits, but shall temporarily suspend the payment of
21 temporary total disability benefits during the period

22 actually worked by the injured employee. The claim shall
23 be closed on a temporary total disability basis either when
24 the injured employee or the authorized treating physician
25 notifies the commission, successor to the commission,
26 other private carrier or self-insured employer, whichever
27 is applicable, that the injured employee is able to perform
28 his or her job or automatically at the end of a period of
29 three months from the date of the first day of work unless
30 the employee notifies the commission, successor to the
31 commission, other private carrier or self-insured employer,
32 whichever is applicable, that he or she is unable to per-
33 form the duties of the job, whichever occurs first. If the
34 injured employee is unable to continue working due to the
35 compensable injury for a three-month period, the injured
36 employee shall provide notice and temporary total disabili-
37 ty benefits shall be reinstated immediately and he or she
38 shall be referred for a rehabilitation evaluation as pro-
39 vided in section nine of this article. No provision of this
40 section shall be construed to prohibit the commission,
41 successor to the commission, other private carrier or self-
42 insured employer, whichever is applicable, from referring
43 the injured employee for any permanent disability evalua-
44 tion required or permitted by any other provision of this
45 article.

46 (d) Nothing in this section shall prevent the employee
47 from returning to work without a trial return-to-work
48 period.

49 (e) Nothing in this section shall be construed to require
50 an injured employee to return to work on a trial basis.

51 (f) The provisions of this section shall be terminated and
52 be of no further force and effect on the first day of July,
53 two thousand seven.

§23-4-8. Physical examination of claimant.

1 The commission, successor to the commission, other
2 private carrier or self-insured employer, whichever is

3 applicable, may, after due notice to the employer and
4 claimant, whenever in its opinion it is necessary, order a
5 claimant of compensation for a personal injury other than
6 occupational pneumoconiosis to appear for examination
7 before a medical examiner or examiners selected by the
8 commission, successor to the commission, other private
9 carrier or self-insured employer, whichever is applicable;
10 and the claimant and employer, respectively, each have the
11 right to select a physician of the claimant's or the em-
12 ployer's own choosing and at the claimant's or the em-
13 ployer's own expense to participate in the examination.
14 All examinations shall be performed in accordance with
15 the protocols and procedures established by the health
16 care advisory panel pursuant to section three-b of this
17 article: *Provided*, That the physician may exceed these
18 protocols when additional evaluation is medically neces-
19 sary. The claimant and employer shall, respectively, be
20 furnished with a copy of the report of examination made
21 by the medical examiner or examiners selected by the
22 commission, successor to the commission, other private
23 carrier or self-insured employer, whichever is applicable.
24 The respective physicians selected by the claimant and
25 employer have the right to concur in any report made by
26 the medical examiner or examiners selected by the com-
27 mission, or each may file with the commission, successor
28 to the commission, other private carrier or self-insured
29 employer, whichever is applicable, a separate report,
30 which separate report shall be considered by the commis-
31 sion in passing upon the claim. If the compensation
32 claimed is for occupational pneumoconiosis, the commis-
33 sion, successor to the commission, other private carrier or
34 self-insured employer, whichever is applicable, may, after
35 due notice to the employer, and whenever in the commis-
36 sion's opinion it is necessary, order a claimant to appear
37 for examination before the occupational pneumoconiosis
38 board provided for in section eight-a of this article. In any
39 case the claimant is entitled to reimbursement for loss of
40 wages, and to reasonable traveling and other expenses
41 necessarily incurred by him or her in obeying the order.

42 Where the claimant is required to undergo a medical
43 examination or examinations by a physician or physicians
44 selected by the employer, as aforesaid or in connection
45 with any claim which is in litigation, the employer shall
46 reimburse the claimant for loss of wages, and reasonable
47 traveling and other expenses in connection with the
48 examination or examinations, not to exceed the expenses
49 paid when a claimant is examined by a physician or
50 physicians selected by the commission, successor to the
51 commission, other private carrier or self-insured employer,
52 whichever is applicable.

**§23-4-8a. Occupational pneumoconiosis board; composition;
term of office; duties; quorum; remuneration.**

1 The occupational pneumoconiosis board shall consist of
2 five licensed physicians who shall be appointed by the
3 executive director. Effective upon termination of the
4 commission, the physicians shall be appointed by the
5 insurance commissioner: *Provided*, That those physicians
6 serving as of the termination of the commission shall
7 continue to serve until replaced. No person shall be
8 appointed as a member of the board, or as a consultant
9 thereto, who has not by special study or experience, or
10 both, acquired special knowledge of pulmonary diseases.
11 All members of the occupational pneumoconiosis board
12 shall be physicians of good professional standing admitted
13 to practice medicine and surgery in this state. Two
14 members shall be roentgenologists. One member of the
15 board shall be designated annually as chairman by the
16 executive director. The term of office of each member of
17 the board shall be six years. The five members of the
18 existing board in office on the effective date of this section
19 shall continue to serve until their terms expire and until
20 their successors have been appointed and have qualified.
21 Any member of the board may be appointed to any
22 number of terms. The function of the board is to deter-
23 mine all medical questions relating to cases of compensa-
24 tion for occupational pneumoconiosis under the direction

25 and supervision of the executive director and, effective
26 upon termination of the commission, the insurance
27 commissioner. Any three members of the board constitute
28 a quorum for the transaction of its business if at least one
29 of the members present is a roentgenologist. The executive
30 director and, effective upon termination of the commis-
31 sion, the insurance commissioner, shall, from time to time,
32 fix the compensation to be paid each member of the board.
33 Members are also entitled to reasonable and necessary
34 traveling and other expenses incurred while actually
35 engaged in the performance of their duties. In fixing the
36 compensation of board members, the executive director or
37 the insurance commissioner shall take into consideration
38 the number of claimants a member of the board actually
39 examines, the actual time spent by members in discharging
40 their duties and the recommendation of the board of
41 managers and governor as to reasonable reimbursement
42 per unit of time expended based on comparative data for
43 physicians within the state in the same medical specialties.

**§23-4-8b. Occupational pneumoconiosis board; procedure;
autopsy.**

1 The occupational pneumoconiosis board, upon reference
2 to it by an appropriate party of a case of occupational
3 pneumoconiosis, shall notify the employee, or in case he or
4 she is dead, the claimant, and the employer, successor to
5 the commission, other private carrier or self-insured
6 employer, whichever is applicable, to appear before the
7 board at a time and place stated in the notice. If the
8 employee is living, he or she shall appear before the board
9 at the time and place specified and submit to the examina-
10 tion, including clinical and X-ray examinations, required
11 by the board. If a physician licensed to practice medicine
12 in the state makes an affidavit that the employee is
13 physically unable to appear at the time and place desig-
14 nated by the board, the board shall, on notice to the proper
15 parties, change the place and time as may reasonably
16 facilitate the hearing or examination of the employee or

17 may appoint a qualified specialist in the field of respira-
18 tory disease to examine the claimant on behalf of the
19 board. The employee, or in case he or she is dead, the
20 claimant, and employer shall also produce as evidence to
21 the board all reports of medical and X-ray examinations
22 which may be in their respective possession or control,
23 showing the past or present condition of the employee. If
24 the employee is dead, the notice of the board shall further
25 require that the claimant produce necessary consents and
26 permits so that an autopsy may be performed, if the board
27 so directs. When in the opinion of the board an autopsy is
28 considered necessary accurately and scientifically to
29 ascertain and determine the cause of death, the autopsy
30 examination shall be ordered by the board, which shall
31 designate a duly licensed physician, a pathologist or any
32 other specialists determined necessary by the board, to
33 make the examination and tests to determine the cause of
34 death and certify his or her or their written findings, in
35 triplicate, to the board. The findings shall be public
36 records. In the event that a claimant for compensation for
37 the death refuses to consent and permit the autopsy to be
38 made, all rights for compensation are forfeited.

39 The employee, or if he or she be dead, the claimant, and
40 the employer, shall be entitled to be present at all exami-
41 nations conducted by the board and to be represented by
42 attorneys and physicians.

**§23-4-8c. Occupational pneumoconiosis board; reports and
distribution thereof; presumption; findings re-
quired 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, shall
3 make its written report, to the commission, successor to
4 the commission, other private carrier or self-insured
5 employer, whichever is applicable, of its findings and
6 conclusions on every medical question in controversy and

7 the commission shall send one copy of the report to the
8 employee or claimant and one copy to the employer. The
9 board shall also return to and file with the commission all
10 the evidence as well as all statements under oath, if any, of
11 the persons who appeared before it on behalf of the
12 employee or claimant, or employer, and also all medical
13 reports and X-ray examinations produced by or on behalf
14 of the employee or claimant, or employer.

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

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

38 (3) What, if any, physician appeared before the board on
39 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 the
43 findings and conclusions of the board, the party shall file
44 with the commission or, on or after the first day of July,
45 one thousand nine hundred ninety-one, with the office of
46 judges, within thirty days from receipt of the copy to that
47 party, unless for good cause shown the commission or chief
48 administrative law judge extends the time, the party's
49 objections to the findings and conclusions of the board in
50 writing, specifying the particular statements of the board's
51 findings and conclusions to which such party objects. The
52 filing of an objection within the time specified is a condi-
53 tion of the right to litigate the findings and therefore
54 jurisdictional. After the time has expired for the filing of
55 objections to the findings and conclusions of the board, the
56 commission or administrative law judge shall proceed to
57 act as provided in this chapter. If after the time has
58 expired for the filing of objections to the findings and
59 conclusions of the board no objections have been filed, the
60 report of a majority of the board of its findings and
61 conclusions on any medical question shall be taken to be
62 plenary and conclusive evidence of the findings and
63 conclusions stated in the report. If objection has been filed
64 to the findings and conclusions of the board, notice of the
65 objection shall be given to the board, and the members of
66 the board joining in the findings and conclusions shall
67 appear at the time fixed by the commission or office of
68 judges for the hearing to submit to examination and cross-
69 examination in respect to the findings and conclusions. At
70 the hearing, evidence to support or controvert the findings
71 and conclusions of the board shall be limited to examina-
72 tion and cross-examination of the members of the board
73 and to the taking of testimony of other qualified physi-
74 cians and roentgenologists.

75 (e) In the event that a claimant receives a final decision
76 that he or she has no evidence of occupational pneumoco-
77 niosis, the claimant is barred for a period of three years
78 from the date of the occupational pneumoconiosis board's
79 decision or until his or her employment with the employer

80 who employed the claimant at the time designated as the
81 claimant's last date of exposure in the denied claim has
82 terminated, whichever is sooner, from filing a new claim
83 or pursuing a previously filed, but unruled upon, claim for
84 occupational pneumoconiosis or requesting a modification
85 of any prior ruling finding him or her not to be suffering
86 from occupational pneumoconiosis. For the purposes of
87 this subsection, a claimant's employment shall be consid-
88 ered to be terminated if, for any reason, he or she has not
89 worked for that employer for a period in excess of ninety
90 days. Any previously filed, but unruled upon, claim shall
91 be consolidated with the claim in which the board's
92 decision is made and shall be denied together with the
93 decided claim. The provisions of this subsection shall not
94 be applied in any claim where doing so would, in and of
95 itself, later cause a claimant's claim to be forever barred
96 by the provisions of section fifteen of this article.

97 (f) Effective upon termination of the commission, the
98 insurance commissioner shall assume all administrative
99 powers and responsibilities necessary to administer
100 sections eight-a, eight-b and eight-c of this article.

§23-4-9. Physical and vocational rehabilitation.

1 (a) The Legislature hereby finds that it is a goal of the
2 workers' compensation program to assist employees to
3 return to suitable gainful employment after an injury. In
4 order to encourage workers to return to employment and
5 to encourage and assist employers in providing suitable
6 employment to injured employees, it is a priority of the
7 commission, successor to the commission, other private
8 carrier or self-insured employer, whichever is applicable,
9 to achieve early identification of individuals likely to need
10 rehabilitation services and to assess the rehabilitation
11 needs of these injured employees. It is the goal of rehabili-
12 tation to return injured employees to employment which
13 is comparable in work and pay to that which the individ-
14 ual performed prior to the injury. If a return to compara-
15 ble work is not possible, the goal of rehabilitation is to

16 return the individual to alternative suitable employment,
17 using all possible alternatives of job modification, restruc-
18 turing, reassignment and training, so that the individual
19 will return to productivity with his or her employer or, if
20 necessary, with another employer. The Legislature further
21 finds that it is the shared responsibility of the employer,
22 the employee, the physician and the commission to cooper-
23 ate in the development of a rehabilitation process designed
24 to promote reemployment for the injured employee.

25 (b) In cases where an employee has sustained a perma-
26 nent disability, or has sustained an injury likely to result
27 in temporary disability as determined by the commission,
28 successor to the commission, other private carrier or self-
29 insured employer, whichever is applicable, the commis-
30 sion, successor to the commission, other private carrier or
31 self-insured employer, whichever is applicable, shall at the
32 earliest possible time determine whether the employee
33 would be assisted in returning to remunerative employ-
34 ment with the provision of rehabilitation services and if it
35 is determined that the employee can be physically and
36 vocationally rehabilitated and returned to remunerative
37 employment by the provision of rehabilitation services
38 including, but not limited to, vocational or on-the-job
39 training, counseling, assistance in obtaining appropriate
40 temporary or permanent work site, work duties or work
41 hours modification, by the provision of crutches, artificial
42 limbs or other approved mechanical appliances, or medi-
43 cines, medical, surgical, dental or hospital treatment or
44 other services which the commission, successor to the
45 commission, other private carrier or self-insured employer,
46 whichever is applicable, in its sole discretion determines
47 will directly assist the employee's return to employment,
48 the commission, successor to the commission, other private
49 carrier or self-insured employer, whichever is applicable,
50 shall immediately develop a rehabilitation plan for the
51 employee and, after due notice to the employer, expend an
52 amount necessary for that purpose: *Provided*, That the
53 expenditure for vocational rehabilitation shall not exceed

54 twenty thousand dollars for any one injured employee:
55 *Provided, however,* That no payment shall be made for
56 such vocational rehabilitation purposes as provided in this
57 section unless authorized by the commission, successor to
58 the commission, other private carrier or self-insured
59 employer, whichever is applicable, prior to the rendering
60 of the physical or vocational rehabilitation, except that
61 payments shall be made for reasonable medical expenses
62 without prior authorization if sufficient evidence exists
63 which would relate the treatment to the injury and the
64 attending physician or physicians have requested authori-
65 zation prior to the rendering of the treatment: *Provided*
66 *further,* That payment for physical rehabilitation, includ-
67 ing the purchase of prosthetic devices and other equipment
68 and training in use of the devices and equipment, are
69 considered expenses within the meaning of section three of
70 this article and are subject to the provisions of sections
71 three, three-b and three-c of this article. The provision of
72 any rehabilitation services may be pursuant to a rehabili-
73 tation plan to be developed and monitored by a rehabilita-
74 tion professional for each injured employee or by such
75 other provider as determined by the commission, successor
76 to the commission, other private carrier or self-insured
77 employer, whichever is applicable. Notwithstanding any
78 other provision of this section to the contrary, the commis-
79 sion may determine under rules promulgated by the board
80 of managers that a rehabilitation plan or any component
81 thereof is not appropriate for an injured employee.

82 (c) In every case in which the commission, successor to
83 the commission, other private carrier or self-insured
84 employer, whichever is applicable, orders physical or
85 vocational rehabilitation of a claimant as provided in this
86 section, the claimant shall, during the time he or she is
87 receiving any vocational rehabilitation or rehabilitative
88 treatment that renders him or her totally disabled during
89 the period of rehabilitation, be compensated on a tempo-
90 rary total disability basis for that period.

91 (d) In every case in which the claimant returns to gainful
92 employment as part of a rehabilitation plan, and the
93 employee's average weekly wage earnings are less than the
94 average weekly wage earnings earned by the injured
95 employee at the time of the injury, he or she shall receive
96 temporary partial rehabilitation benefits calculated as
97 follows: The temporary partial rehabilitation benefit shall
98 be seventy percent of the difference between the average
99 weekly wage earnings earned at the time of the injury and
100 the average weekly wage earnings earned at the new
101 employment, both to be calculated as provided in sections
102 six, six-d and fourteen of this article as the calculation is
103 performed for temporary total disability benefits, subject
104 to the following limitations: In no event are the benefits
105 subject to the minimum benefit amounts required by the
106 provisions of subdivision (b), section six of this article, nor
107 may the benefits exceed the temporary total disability
108 benefits to which the injured employee would be entitled
109 pursuant to sections six, six-d and fourteen of this article
110 during any period of temporary total disability resulting
111 from the injury in the claim: *Provided*, That no temporary
112 total disability benefits shall be paid for any period for
113 which temporary partial rehabilitation benefits are paid:
114 *Provided, however*, That the aggregate award of tempo-
115 rary total rehabilitation or temporary partial rehabilita-
116 tion benefits for a single injury for which an award of
117 temporary total rehabilitation or temporary partial
118 rehabilitation benefits is made on or after the effective
119 date of the amendment and reenactment of this section in
120 the year two thousand three shall be for a period not
121 exceeding fifty-two weeks unless the payment of tempo-
122 rary total rehabilitation disability benefits is in conjunc-
123 tion with an approved vocational rehabilitation plan for
124 retraining, in which event the payment period of tempo-
125 rary total rehabilitation disability benefits may be ex-
126 tended for a period not to exceed a total of one hundred
127 four weeks. The amount of temporary partial rehabilita-
128 tion benefits payable under this subsection shall be

129 reviewed every ninety days to determine whether the
130 injured employee's average weekly wage in the new
131 employment has changed and, if the change has occurred,
132 the amount of benefits payable under this subsection shall
133 be adjusted prospectively. Temporary partial rehabilita-
134 tion benefits shall only be payable when the injured
135 employee is receiving vocational rehabilitation services in
136 accordance with a rehabilitation plan developed under this
137 section and no payment of temporary partial rehabilita-
138 tion benefits shall be made after the claimant has received
139 the vocational training provided under the rehabilitation
140 plan.

141 (e) The executive director, in consultation with the board
142 of managers, shall propose for promulgation rules for the
143 purpose of developing a comprehensive rehabilitation
144 program which will assist injured workers to return to
145 suitable gainful employment after an injury in a manner
146 consistent with the provisions and findings of this section.
147 The rules shall provide definitions for rehabilitation
148 facilities and rehabilitation services pursuant to this
149 section. Notwithstanding any other provision of this
150 chapter to the contrary, and in addition to the provisions
151 of section three of this article authorizing employers to
152 participate in a managed health care plan, including a
153 managed health care plan that provides physical and
154 vocational rehabilitation services, an employer may
155 contract directly with one or more providers of vocational
156 rehabilitation services to be the employer's preferred
157 provider of vocational rehabilitation services for its
158 employees who receive injuries compensable under the
159 provisions of this chapter and the rules promulgated under
160 this section may require those employees to use the
161 preferred providers.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury, other than occupational
2 pneumoconiosis or other occupational disease, suffered by
3 an employee in the course of and resulting from his or her

4 employment, causes death, and disability is continuous
5 from the date of the injury until the date of death, or if
6 death results from occupational pneumoconiosis or from
7 any other occupational disease, the benefits shall be in the
8 amounts and to the persons as follows:

9 (a) If there are no dependents, the disbursements shall be
10 limited to the expense provided for in sections three and
11 four of this article;

12 (b) If there are dependents as defined in subdivision (d)
13 of this section, the dependents shall be paid for as long as
14 their dependency continues in the same amount that was
15 paid or would have been paid the deceased employee for
16 total disability had he or she lived. The order of prefer-
17 ence of payment and length of dependence shall be as
18 follows:

19 (1) A dependent widow or widower until death or
20 remarriage of the widow or widower, and any child or
21 children dependent upon the decedent until each child
22 reaches eighteen years of age or where the child after
23 reaching eighteen years of age continues as a full-time
24 student in an accredited high school, college, university,
25 business or trade school, until the child reaches the age of
26 twenty-five years, or if an invalid child, to continue as
27 long as the child remains an invalid. All persons are
28 jointly entitled to the amount of benefits payable as a
29 result of employee's death;

30 (2) A wholly dependent father or mother until death; and

31 (3) Any other wholly dependent person for a period of six
32 years after the death of the deceased employee;

33 (c) If the deceased employee leaves no wholly dependent
34 person, but there are partially dependent persons at the
35 time of death, the payment shall be fifty dollars a month
36 to continue for the portion of the period of six years after
37 the death, determined by the commission, successor to the
38 commission, other private carrier or self-insured employer,

39 whichever is applicable, but no partially dependent person
40 shall receive compensation payments as a result of the
41 death of more than one employee.

42 Compensation under this subdivision and subdivision (b)
43 of this section shall, except as may be specifically provided
44 to the contrary in those subdivisions, cease upon the death
45 of the dependent, and the right to the compensation shall
46 not vest in his or her estate.

47 (d) "Dependent", as used in this chapter, means a widow,
48 widower, child under eighteen years of age, or under
49 twenty-five years of age when a full-time student as
50 provided in this section, invalid child or posthumous child,
51 who, at the time of the injury causing death, is dependent,
52 in whole or in part, for his or her support upon the earn-
53 ings of the employee, stepchild under eighteen years of
54 age, or under twenty-five years of age when a full-time
55 student as provided in this section, child under eighteen
56 years of age legally adopted prior to the injury causing
57 death, or under twenty-five years of age when a full-time
58 student as provided in this section, father, mother, grand-
59 father or grandmother, who, at the time of the injury
60 causing death, is dependent, in whole or in part, for his or
61 her support upon the earnings of the employee; and invalid
62 brother or sister wholly dependent for his or her support
63 upon the earnings of the employee at the time of the injury
64 causing death; and

65 (e) If a person receiving permanent total disability
66 benefits dies from a cause other than a disabling injury
67 leaving any dependents as defined in subdivision (d) of this
68 section, an award shall be made to the dependents in an
69 amount equal to one hundred four times the weekly
70 benefit the worker was receiving at the time of his or her
71 death and be paid either as a lump sum or in periodic
72 payments, at the option of the dependent or dependents.

§23-4-11. To whom death benefits paid.

1 The benefits, in case of death, shall be paid to one or
2 more dependents of the decedent, or to any other persons,
3 for the benefit of all of the dependents, as may be deter-
4 mined by the commission, successor to the commission,
5 other private carrier or self-insured employer, whichever
6 is applicable, who may apportion the benefits among the
7 dependents in the manner as they consider just and
8 equitable. Payment to a dependent subsequent in right
9 may be made if the commission considers proper and it
10 operates to discharge all other claims for the benefits.

§23-4-12. Application of benefits.

1 The dependent or person to whom benefits are paid shall
2 apply the benefits to the use of the several beneficiaries of
3 the benefits according to their respective claims upon the
4 decedent for support, in compliance with the finding and
5 direction of the commission, successor to the commission,
6 other private carrier or self-insured employer, whichever
7 is applicable.

§23-4-14. Computation of benefits.

1 (a) The average weekly wage earnings, wherever earned,
2 of the injured person at the date of injury and the average
3 weekly wage in West Virginia as determined by the
4 commission, and, effective the first day of January, two
5 thousand six, the insurance commissioner, in effect at the
6 date of injury, shall be taken as the basis upon which to
7 compute the benefits.

8 (1) In cases involving occupational pneumoconiosis or
9 other occupational diseases, the "date of injury" is the
10 date of the last exposure to the hazards of occupational
11 pneumoconiosis or other occupational diseases.

12 (2) In computing benefits payable on account of occupa-
13 tional pneumoconiosis, the commission, successor to the
14 commission, other private carrier or self-insured employer,
15 whichever is applicable, shall deduct the amount of all
16 prior workers' compensation benefits paid to the same

17 claimant on account of silicosis, but a prior silicosis award
18 shall not, in any event, preclude an award for occupational
19 pneumoconiosis otherwise payable under this article.

20 (b)(1) Until the first day of July, one thousand nine
21 hundred ninety-four, the expression "average weekly wage
22 earnings, wherever earned, of the injured person, at the
23 date of injury", within the meaning of this chapter, shall
24 be computed based upon the daily rate of pay at the time
25 of the injury or upon the average pay received during the
26 two months, six months or twelve months immediately
27 preceding the date of the injury, whichever is most favor-
28 able to the injured employee, except for the purpose of
29 computing temporary total disability benefits for part-
30 time employees pursuant to the provisions of section six-d
31 of this article.

32 (2) On and after the first day of July, one thousand nine
33 hundred ninety-four, the expression "average weekly wage
34 earnings, wherever earned, of the injured person, at the
35 date of injury", within the meaning of this chapter, shall
36 be computed based upon the daily rate of pay at the time
37 of the injury or upon the weekly average derived from the
38 best quarter of wages out of the preceding four quarters of
39 wages as reported to the commission pursuant to subsec-
40 tion (b), section two, article two of this chapter, whichever
41 is most favorable to the injured employee, except for the
42 purpose of computing temporary total disability benefits
43 for part-time employees pursuant to the provisions of
44 section six-d of this article.

45 (c) The expression "average weekly wage in West
46 Virginia", within the meaning of this chapter, is the
47 average weekly wage in West Virginia as determined by
48 the commissioner of the bureau of employment programs
49 in accordance with the provisions of sections ten and
50 eleven, article six, chapter twenty-one-a of this code and
51 other applicable provisions of said chapter.

52 (d) In any claim for injuries, including occupational
53 pneumoconiosis and other occupational diseases, occurring
54 on or after the first day of July, one thousand nine hun-
55 dred seventy-one, any award for temporary total, perma-
56 nent partial or permanent total disability benefits or for
57 dependent benefits shall be paid at the weekly rates or in
58 the monthly amount in the case of dependent benefits
59 applicable to the claimant in effect on the date of the
60 injury. In no event shall an award for permanent total
61 disability be subject to annual adjustments resulting from
62 changes in the average weekly wage in West Virginia.

§23-4-15. Application for benefits.

1 (a) To entitle any employee or dependent of a deceased
2 employee to compensation under this chapter, other than
3 for occupational pneumoconiosis or other occupational
4 disease, the application for compensation shall be made on
5 the form or forms prescribed by the commission and,
6 effective upon termination of the commission, the insur-
7 ance commissioner, and filed with the commission,
8 successor to the commission, other private carrier or self-
9 insured employer, whichever is applicable, within six
10 months from and after the injury or death, as the case may
11 be, and unless filed within the six months period, the right
12 to compensation under this chapter is forever barred, such
13 time limitation being hereby declared to be a condition of
14 the right and hence jurisdictional, and all proofs of
15 dependency in fatal cases must also be filed with the
16 commission within six months from and after the death.
17 In case the employee is mentally or physically incapable of
18 filing the application, it may be filed by his or her attorney
19 or by a member of his or her family.

20 (b) To entitle any employee to compensation for occupa-
21 tional pneumoconiosis under the provisions of this subsec-
22 tion, the application for compensation shall be made on
23 the form or forms prescribed by the commission and
24 effective upon termination of the commission, the insur-
25 ance commissioner, and filed with the commission,

26 successor to the commission, other private carrier or self-
27 insured employer, whichever is applicable, within three
28 years from and after the last day of the last continuous
29 period of sixty days or more during which the employee
30 was exposed to the hazards of occupational pneumoconio-
31 sis or within three years from and after a diagnosed
32 impairment due to occupational pneumoconiosis was made
33 known to the employee by a physician and unless filed
34 within the three-year period, the right to compensation
35 under this chapter is forever barred, such time limitation
36 being hereby declared to be a condition of the right and
37 hence jurisdictional, or, in the case of death, the applica-
38 tion shall be filed by the dependent of the employee within
39 one year from and after the employee's death, and such
40 time limitation is a condition of the right and hence
41 jurisdictional.

42 (c) To entitle any employee to compensation for occupa-
43 tional disease other than occupational pneumoconiosis
44 under the provisions of this section, the application for
45 compensation shall be made on the form or forms pre-
46 scribed by the commission and, effective upon termination
47 of the commission, the insurance commissioner, and filed
48 with the commission, successor to the commission, other
49 private carrier or self-insured employer, whichever is
50 applicable, within three years from and after the day on
51 which the employee was last exposed to the particular
52 occupational hazard involved or within three years from
53 and after the employee's occupational disease was made
54 known to him or her by a physician or which he or she
55 should reasonably have known, whichever last occurs, and
56 unless filed within the three-year period, the right to
57 compensation under this chapter shall be forever barred,
58 such time limitation being hereby declared to be a condi-
59 tion of the right and therefore jurisdictional, or, in case of
60 death, the application shall be filed as aforesaid by the
61 dependent of the employee within one year from and after
62 the employee's death, and such time limitation is a condi-
63 tion of the right and hence jurisdictional.

§23-4-15a. Nonresident alien beneficiaries.

1 Notwithstanding any other provisions of this chapter,
2 nonresident alien beneficiaries are entitled to the same
3 benefits as citizens of the United States: *Provided*, That
4 the commission, successor to the commission, other private
5 carrier or self-insured employer, whichever is applicable,
6 in its discretion may make, and the beneficiary shall
7 accept, commutation of the benefits into a lump sum
8 settlement and payment. Nonresident alien beneficiaries
9 within the meaning of this section means persons not
10 citizens of the United States residing outside of the
11 territorial limits of the United States at the time of the
12 injury with respect to which benefits are awarded.

§23-4-15b. Determination of nonmedical questions by commission; claims for occupational pneumoconiosis; hearing.

1 (a) If a claim for occupational pneumoconiosis benefits
2 is filed by an employee within three years from and after
3 the last day of the last continuous period of sixty days'
4 exposure to the hazards of occupational pneumoconiosis,
5 the commission shall determine whether the claimant was
6 exposed to the hazards of occupational pneumoconiosis for
7 a continuous period of not less than sixty days while in the
8 employ of the employer within three years prior to the
9 filing of his or her claim, whether in the state of West
10 Virginia the claimant was exposed to such hazard over a
11 continuous period of not less than two years during the ten
12 years immediately preceding the date of his or her last
13 exposure to the hazard and whether the claimant was
14 exposed to the hazard over a period of not less than ten
15 years during the fifteen years immediately preceding the
16 date of his or her last exposure to the hazard. If a claim
17 for occupational pneumoconiosis benefits is filed by an
18 employee within three years from and after the employee's
19 occupational pneumoconiosis was made known to the
20 employee by a physician, the commission shall determine
21 whether the claimant filed his or her application within

22 that period and whether in the state of West Virginia the
23 claimant was exposed to the hazard over a continuous
24 period of not less than two years during the ten years
25 immediately preceding the date of last exposure to the
26 hazard and whether the claimant was exposed to the
27 hazard over a period of not less than ten years during the
28 fifteen years immediately preceding the date of last
29 exposure to the hazard. If a claim for occupational
30 pneumoconiosis benefits is filed by a dependent of a
31 deceased employee, the commission shall determine
32 whether the deceased employee was exposed to the
33 hazards of occupational pneumoconiosis for a continuous
34 period of not less than sixty days while in the employ of
35 the employer within ten years prior to the filing of the
36 claim, whether in the state of West Virginia the deceased
37 employee was exposed to the hazard over a continuous
38 period of not less than two years during the ten years
39 immediately preceding the date of his or her last exposure
40 to the hazard and whether the claimant was exposed to the
41 hazard over a period of not less than ten years during the
42 fifteen years immediately preceding the date of his or her
43 last exposure to the hazard. The commission shall also
44 determine other nonmedical facts that, in the commission's
45 opinion, are pertinent to a decision on the validity of the
46 claim.

47 The commission shall enter an order with respect to
48 nonmedical findings within ninety days following receipt
49 by the commission of both the claimant's application for
50 occupational pneumoconiosis benefits and the physician's
51 report filed in connection with the claimant's application
52 and shall give each interested party notice in writing of
53 these findings with respect to all the nonmedical facts.
54 The findings and actions of the commission are final unless
55 the employer, employee, claimant or dependent, within
56 thirty days after receipt of the notice, objects to the
57 findings, and unless an objection is filed within the thirty-
58 day period, the findings are forever final, the time limita-
59 tion is a condition of the right to litigate the findings and

60 therefor jurisdictional. Upon receipt of an objection, the
61 chief administrative law judge shall set a hearing as
62 provided in section nine, article five of this chapter. In the
63 event of an objection to the findings by the employer, the
64 claim shall, notwithstanding the fact that one or more
65 hearings may be held with respect to the objection, mature
66 for reference to the occupational pneumoconiosis board
67 with like effect as if the objection had not been filed. If
68 the administrative law judge concludes after the protest
69 hearings that the claim should be dismissed, a final order
70 of dismissal shall be entered. The final order is subject to
71 appeal in accordance with the provisions of sections ten
72 and twelve, article five of this chapter. If the administra-
73 tive law judge concludes after the protest hearings that the
74 claim should be referred to the occupational pneumoconi-
75 osis board for its review, the order entered shall be inter-
76 locutory only and may be appealed only in conjunction
77 with an appeal from a final order with respect to the
78 findings of the occupational pneumoconiosis board.

79 (b) The administrative duties required to be performed
80 by the commission pursuant to section fifteen-b of this
81 article, and all applicable exempt legislative rules shall
82 transfer from the commission to the insurance commis-
83 sioner effective upon termination of the commission.

**§23-4-16. Jurisdiction over case continuous; modification of
finding or order; time limitation on awards; reim-
bursement of claimant for expenses; reopening
cases involving permanent total disability; promul-
gation of rules.**

1 (a) The power and jurisdiction of the commission,
2 successor to the commission, other private carrier or self-
3 insured employer, whichever is applicable, over each case
4 is continuing and the commission, successor to the com-
5 mission, other private carrier or self-insured employer,
6 whichever is applicable, may, in accordance with the
7 provisions of this section and after due notice to the
8 employer, make modifications or changes with respect to

9 former findings or orders that are justified. Upon and
10 after the second day of February, one thousand nine
11 hundred ninety-five, the period in which a claimant may
12 request a modification, change or reopening of a prior
13 award that was entered either prior to or after that date
14 shall be determined by the following subdivisions of this
15 subsection. Any request that is made beyond that period
16 shall be refused.

17 (1) Except as provided in section twenty-two of this
18 article, in any claim which was closed without the entry of
19 an order regarding the degree, if any, of permanent
20 disability that a claimant has suffered, or in any case in
21 which no award has been made, any request must be made
22 within five years of the closure. During that time period,
23 only two requests may be filed.

24 (2) Except as stated below, in any claim in which an
25 award of permanent disability was made, any request
26 must be made within five years of the date of the initial
27 award. During that time period, only two requests may be
28 filed. With regard to those occupational diseases, includ-
29 ing occupational pneumoconiosis, which are medically
30 recognized as progressive in nature, if any such request is
31 granted by the commission, successor to the commission,
32 other private carrier or self-insured employer, whichever
33 is applicable, a new five-year period begins upon the date
34 of the subsequent award. With the advice of the health
35 care advisory panel, the executive director and the board
36 of managers shall by rule designate those progressive
37 diseases which are customarily the subject of claims.

38 (3) No further award may be made in fatal cases except
39 within two years after the death of the employee.

40 (4) With the exception of the items set forth in subsec-
41 tion (d), section three of this article, in any claim in which
42 medical or any type of rehabilitation service has not been
43 rendered or durable medical goods or other supplies have
44 not been received for a period of five years, no request for

45 additional medical or any type of rehabilitation benefits
46 shall be granted nor shall any medical or any type of
47 rehabilitation benefits or any type of goods or supplies be
48 paid for by the commission, successor to the commission,
49 other private carrier or self-insured employer, whichever
50 is applicable, if they were provided without a prior
51 request. For the exclusive purposes of this subdivision,
52 medical services and rehabilitation services shall not
53 include any encounter in which significant treatment was
54 not performed.

55 (b) In any claim in which an injured employee makes
56 application for a further period of temporary total disabili-
57 ty, if the application is in writing and filed within the
58 applicable time limit stated above, the commission,
59 successor to the commission, other private carrier or self-
60 insured employer, whichever is applicable, shall pass upon
61 the request within thirty days of the receipt of the request.
62 If the decision is to grant the request, the order shall
63 provide for the receipt of temporary total disability
64 benefits. In any case in which an injured employee makes
65 application for a further award of permanent partial
66 disability benefits or for an award of permanent total
67 disability benefits, if the application is in writing and filed
68 within the applicable time limit as stated above, the
69 commission, successor to the commission, other private
70 carrier or self-insured employer, whichever is applicable,
71 shall pass upon the request within thirty days of its receipt
72 and, if the commission determines that the claimant may
73 be entitled to an award, the commission, successor to the
74 commission, other private carrier or self-insured employer,
75 whichever is applicable, shall refer the claimant for
76 further examinations that are necessary.

77 (c) If the application is based on a report of any medical
78 examination made of the claimant and submitted by the
79 claimant to the commission, successor to the commission,
80 other private carrier or self-insured employer, whichever
81 is applicable, in support of his or her application and the

82 claim is opened for further consideration and additional
83 award is later made, the claimant shall be reimbursed for
84 the expenses of the examination. The reimbursement shall
85 be made by the commission, successor to the commission,
86 other private carrier or self-insured employer, whichever
87 is applicable, to the claimant, in addition to all other
88 benefits awarded, upon due proof of the amount thereof
89 being furnished by the claimant, but shall in no case
90 exceed the sum fixed pursuant to the applicable schedule
91 of maximum reasonable fees.

92 (d) The commission, successor to the commission, other
93 private carrier or self-insured employer, whichever is
94 applicable, has continuing power and jurisdiction over
95 claims in which permanent total disability awards have
96 been made after the eighth day of April, one thousand nine
97 hundred ninety-three.

98 (1) The commission, successor to the commission, other
99 private carrier or self-insured employer, whichever is
100 applicable, shall continuously monitor permanent total
101 disability awards and may, from time to time, after due
102 notice to the claimant, reopen a claim for reevaluation of
103 the continuing nature of the disability and possible
104 modification of the award. At such times as the commis-
105 sion may determine, the commission may require the
106 claimant to provide documents and other information to
107 the commission, successor to the commission, other private
108 carrier or self-insured employer, whichever is applicable,
109 including, but not limited to, tax returns, financial records
110 and affidavits demonstrating level of income, recreational
111 activities, work activities, medications used and physi-
112 cians or other medical or rehabilitation providers treating
113 or prescribing medication or other services for the claim-
114 ant; require the claimant to appear under oath before the
115 commission, successor to the commission, other private
116 carrier or self-insured employer, whichever is applicable,
117 or its duly authorized representative and answer ques-
118 tions; and suspend or terminate any benefits of a claimant

119 who willfully fails to provide the information or appear as
120 required: *Provided*, That the commission shall develop,
121 implement and complete a program as soon as reasonably
122 possible that requires each person receiving permanent
123 total disability benefits on the effective date of the amend-
124 ment and reenactment of this section in the year two
125 thousand three, and each person who is awarded those
126 benefits thereafter, to submit the tax returns and the
127 affidavit described herein at least once: *Provided, how-*
128 *ever*, That this requirement does not restrict the commis-
129 sion's authority to require the information that may be
130 required herein at such other times as the commission may
131 determine. The commission, successor to the commission,
132 other private carrier or self-insured employer, whichever
133 is applicable, may reopen a claim for reevaluation when,
134 in its sole discretion, it concludes that there exists good
135 cause to believe that the claimant no longer meets the
136 eligibility requirements under subdivision (n), section six
137 of this article. The eligibility requirements, including any
138 vocational standards, shall be applied as those require-
139 ments are stated at the time of a claim's reopening.

140 (2) Upon reopening a claim under this subsection, the
141 commission, successor to the commission, other private
142 carrier or self-insured employer, whichever is applicable,
143 may take evidence, have the claimant evaluated, make
144 findings of fact and conclusions of law and shall vacate,
145 modify or affirm the original permanent total disability
146 award as the record requires. The claimant's former
147 employer shall not be a party to the reevaluation, but shall
148 be notified of the reevaluation and may submit any
149 information as the employer may elect. In the event the
150 claimant retains his or her award following the reevalua-
151 tion, the claimant's reasonable attorneys' fees incurred in
152 defending the award shall be paid by the workers' com-
153 pensation commission, successor to the commission, other
154 private carrier or self-insured employer, whichever is
155 applicable. In addition, the workers' compensation
156 commission, successor to the commission, other private

157 carrier or self-insured employer, whichever is applicable,
158 shall reimburse a prevailing claimant for his or her costs
159 in obtaining one evaluation on each issue during the
160 course of the reevaluation with the reimbursement being
161 made from the fund. The board of managers shall adopt
162 criteria for the determination of reasonable attorneys' fees.

163 (3) This subsection shall not be applied to awards made
164 under the provisions of subdivision (m), section six of this
165 article. The claimant may seek review of the final order as
166 otherwise provided in article five of this chapter for
167 review of orders granting or denying permanent disability
168 awards.

169 (4) The commission shall establish by rule criteria for
170 review, reopening and reevaluating a claim under this
171 subsection. The commission shall at least quarterly
172 provide a report of the exercise of its authority to continu-
173 ously monitor permanent total disability awards under
174 this section to the joint committee on government and
175 finance and the joint commission on economic develop-
176 ment.

177 (e) A claimant may have only one active request for a
178 permanent disability award pending in a claim at any one
179 time. Any new request that is made while another is
180 pending shall be consolidated into the former request.

§23-4-16a. Interest on benefits.

1 Whenever any award of temporary total, permanent
2 partial or permanent total disability benefits or dependent
3 benefits is made on or after the first day of July, one
4 thousand nine hundred seventy-one, and a protest is filed
5 to the award or an appeal is taken from the award by an
6 employer only and not by the claimant or dependent and
7 the award is not ultimately denied or reduced following
8 the protest or appeal, the commission, successor to the
9 commission, other private carrier or self-insured employer,
10 whichever is applicable, shall add interest to the award at
11 the simple rate of six percent per annum from the date the

12 award would have been payable had the protest or appeal
13 not been filed or taken, exclusive of any period for which
14 a continuance was granted upon motion of any party other
15 than the protesting or appealing employer. Any interest
16 payable shall be charged to the account of the protesting
17 or appealing employer to the extent that the benefits upon
18 which such interest is computed are charged to the ac-
19 count of the employer.

§23-4-17. Commutation of periodical benefits.

1 The commission, successor to the commission, other
2 private carrier or self-insured employer, whichever is
3 applicable, under special circumstances and when it is
4 considered advisable, may commute periodical benefits to
5 one or more lump-sum payments. Upon the application of
6 any claimant who has received an award of partial or total
7 disability, who is not a citizen of the United States and
8 desires to reside permanently beyond the territorial limits
9 of the United States, or upon the application of an alien
10 dependent of a deceased employee with respect of whose
11 death award of compensation has been made, the depend-
12 ent residing in the territorial limits of the United States at
13 the time of the decedent's death, and desiring to reside
14 permanently beyond the territorial limits of the United
15 States, the commission, successor to the commission, other
16 private carrier or self-insured employer, whichever is
17 applicable, may commute into one lump-sum payment the
18 periodical payments to which the claimant or dependent
19 would be entitled, but at the rate of one-half the amount
20 that would be payable to a citizen of the United States
21 under like circumstances. The lump-sum payment at the
22 rate specified in this section discharges all liability with
23 respect to the award, but in no event shall the award be
24 paid until the claimant or dependent has actually arrived
25 and domiciled himself or herself outside the territorial
26 limits of the United States, except a sufficient portion of
27 the award to pay transportation and other necessary
28 expenses.

§23-4-20. Postmortem examinations.

1 The commission, successor to the commission, other
2 private carrier or self-insured employer, whichever is
3 applicable, may, after due notice to the employer and
4 claimant, whenever it considers it necessary, order an
5 autopsy and may designate a duly licensed physician to
6 make the postmortem examination or examinations that
7 are necessary to determine the cause of the deceased
8 employee's death. The physician shall file with the
9 commission a written report of his or her findings. The
10 claimant and the employer, respectively, have the right to
11 select a physician of his, her or its own choosing and, at his
12 or her or its own expense, to participate in the postmortem
13 examination. The respective physicians selected by the
14 claimant and the employer have the right to concur in any
15 report made by the physician selected by the commission,
16 successor to the commission, other private carrier or self-
17 insured employer, whichever is applicable, or each may
18 file with the commission, successor to the commission,
19 other private carrier or self-insured employer, whichever
20 is applicable, a separate report. In any case, including
21 silicosis cases, in which either the employer or a claimant
22 requests that an autopsy be performed, the autopsy shall
23 be directed as provided in this section. In the event that a
24 claimant for compensation for the death refuses to consent
25 and permit the autopsy to be made all rights to compensa-
26 tion shall be forfeited.

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

1 (a) Notwithstanding any provision of this chapter to the
2 contrary, except as stated below, no claimant shall be
3 awarded permanent total disability benefits arising under
4 subdivision (d) or (n), section six of this article or section
5 eight-c of this article who terminates active employment
6 and is receiving full old-age retirement benefits under the

7 Social Security Act, 42 U.S.C. §§401 and 402. Any claim-
8 ant shall be evaluated only for the purposes of receiving a
9 permanent partial disability award premised solely upon
10 the claimant's impairments. This subsection is not appli-
11 cable in any claim in which the claimant has completed
12 the submission of his or her evidence on the issue of
13 permanent total disability prior to the later of the follow-
14 ing: Termination of active employment or the initial
15 receipt of full old-age retirement benefits under the Social
16 Security Act. Once the claimant has terminated active
17 employment and has begun to receive full old-age social
18 security retirement benefits, the claimant may not produce
19 additional evidence of permanent total disability nor shall
20 the claim be remanded for the production of the evidence.

21 (b) The workers' compensation commission, successor to
22 the commission, other private carrier or self-insured
23 employer, whichever is applicable, has the sole and
24 exclusive jurisdiction to initially hear and decide any
25 claim or request pertaining, in whole or in part, to subdivi-
26 sion (d) or (n), section six of this article. Any claim or
27 request for permanent total disability benefits arising
28 under said subdivisions shall first be presented to the
29 commission as part of the initial claim filing or by way of
30 an application for modification or adjustment pursuant to
31 section sixteen of this article. The office of judges may
32 consider a claim only after the commission, successor to
33 the commission, other private carrier or self-insured
34 employer, whichever is applicable, has entered an appro-
35 priate order.

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

1 (a) After the eighth day of April, one thousand nine
2 hundred ninety-three, a reduction in the amount of
3 benefits as specified in subsection (b) of this section shall
4 be made whenever benefits are being paid for a permanent
5 total disability award regardless of when the benefits were
6 awarded. This section is not applicable to the receipt of

7 medical benefits or the payment for medical benefits, the
8 receipt of permanent partial disability benefits, the receipt
9 of benefits by partially or wholly dependent persons, or to
10 the receipt of benefits pursuant to the provisions of
11 subsection (e), section ten of this article. Prior to the
12 application of this section to any claimant, the commis-
13 sion, successor to the commission, other private carrier or
14 self-insured employer, whichever is applicable, shall give
15 the claimant notice of the effect of this section upon a
16 claimant's award if and when the claimant later earns
17 wages.

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

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-1. Disabled workers' relief fund created.

1 (a) For the relief of persons who are receiving benefits
2 pursuant to a permanent total disability award in amounts
3 less than thirty-three and one-third percent of the average
4 weekly wage for the state of West Virginia per month, and
5 for the relief of widows who are receiving benefits on
6 account of the death of an employee in amounts less than
7 thirty-three and one-third percent of the average weekly

8 wage in the state of West Virginia per month, and for the
9 relief of children of employees deceased before one
10 thousand nine hundred sixty-seven, who are under the age
11 of twenty-three and who are full-time students, and for
12 the relief of other persons who are receiving dependents'
13 benefits on account of the death of an employee in
14 amounts less than the specific monetary amounts set forth
15 in section ten, article four of this chapter and in effect as
16 of the first day of July, one thousand nine hundred
17 seventy-three, there is continued a separate fund, hereto-
18 fore known as the "Disabled Workmen's Relief Fund", and
19 which shall hereafter be known as the "Disabled Workers'
20 Relief Fund", which shall consist of any sums that are,
21 from time to time, made available to carry out the objects
22 and purposes of this article. The fund shall be in the
23 custody of the state treasurer and disbursements from the
24 fund shall be made upon requisition signed by the execu-
25 tive director to those persons entitled to participate in the
26 fund and in such amounts to each participant that are
27 provided in section three of this article.

28 (b) Effective upon termination of the commission, the
29 "Disabled Workers' Relief Fund" shall be administered by
30 the successor to the commission and the administrative
31 duties assigned to the executive director shall be trans-
32 ferred to the chief executive officer of the successor to the
33 commission.

§23-4A-4. Mode of payment.

1 Payments to an individual entitled to participate in the
2 disabled workers' relief fund may be made from said fund
3 by separate check or may be made from said fund and
4 from the workers' compensation fund and, effective upon
5 termination of the commission, the old fund, by one check,
6 but each such check drawn on the two funds shall be so
7 written as to show plainly the payments made from each
8 fund. No disbursements shall be made from the workers'
9 compensation fund or the old fund on account of any
10 provisions of this article.

§23-4A-9. Transfer of authority to the insurance commissioner.

1 Effective upon termination of the commission, the
2 authority to make the annual transfer as required in
3 section eight of this article shall transfer to the insurance
4 commissioner.

ARTICLE 4B. COAL WORKERS' PNEUMOCONIOSIS FUND.

§23-4B-9. Novation to the successor of the commission.

1 Upon the termination of the commission, all assets,
2 obligations and liabilities resulting from this article are
3 transferred to the successor of the commission. The state
4 treasurer and all other departments, agencies and boards
5 shall cooperate to ensure this novation occurs in a expedi-
6 ent and orderly fashion. Thereafter, the company shall
7 offer insurance to provide for the benefits required by this
8 article until at least the thirtieth day of June, two thou-
9 sand eight.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-5. Administration.

1 Until the termination of the commission, the employers'
2 excess liability fund shall be administered by the executive
3 director, who shall employ any employees that are neces-
4 sary to discharge his or her duties and responsibilities
5 under this article. All payments of salaries and expenses
6 of the employees and all expenses peculiar to the adminis-
7 tration of this article shall be made by the state treasurer
8 from the employers' excess liability fund upon requisitions
9 signed by the executive director.

§23-4C-6. Novation to the successor of the commission.

1 Upon the termination of the commission, all assets,
2 obligations and liabilities resulting from this article are
3 transferred to the successor of the commission. Thereafter,
4 the company shall offer insurance to provide for the
5 benefits required by this article until at least the thirtieth

6 day of June, two thousand eight. The state treasurer and
7 all other departments, agencies and boards shall cooperate
8 to ensure this novation occurs in an expedient and orderly
9 fashion.

ARTICLE 5. REVIEW.

**§23-5-1. Notice by commission or self-insured employer of
decision; procedurcs on claims; objections and
hearing.**

1 (a) The workers' compensation commission, the succes-
2 sor to the commission, other private insurance carriers and
3 self-insured employers may hear and determine all
4 questions within their jurisdiction. In matters arising
5 under articles three and four of this chapter, the commis-
6 sion, the successor to the commission, other private
7 insurance carriers and self-insured employers shall
8 promptly review and investigate all claims. The parties to
9 a claim shall file the information in support of their
10 respective positions as they consider proper. In addition,
11 the commission, the successor to the commission, other
12 private insurance carriers and self-insured employers may
13 develop additional information that it considers to be
14 necessary in the interests of fairness to the parties and in
15 keeping with their fiduciary obligations. With regard to
16 any issue which is ready for a decision, the commission,
17 the successor to the commission, other private insurance
18 carriers and self-insured employers shall explain the basis
19 of its decisions.

20 (b) Except with regard to interlocutory matters and
21 those matters set forth in subsection (d) of this section,
22 upon making any decision, upon making or refusing to
23 make any award or upon making any modification or
24 change with respect to former findings or orders, as
25 provided by section sixteen, article four of this chapter,
26 the commission, the successor to the commission, other
27 private insurance carriers and self-insured employers shall
28 give notice, in writing, to the employer, employee, claim-

29 ant or dependant as the case may be, of its action. The
30 notice shall state the time allowed for filing an objection
31 to the finding. The action of the commission, the successor
32 to the commission, other private insurance carriers and
33 self-insured employers is final unless the employer,
34 employee, claimant or dependant shall, within thirty days
35 after the receipt of the notice, object in writing, to the
36 finding. Unless an objection is filed within the thirty-day
37 period, the finding or action is final. This time limitation
38 is a condition of the right to litigate the finding or action
39 and hence jurisdictional. Any objection shall be filed with
40 the office of judges with a copy served upon the commis-
41 sion, the successor to the commission, other private
42 insurance carriers and self-insured employers, whichever
43 is applicable, and other parties in accordance with the
44 procedures set forth in sections eight and nine of this
45 article. In all instances where a private carrier, self-
46 insured employer or a third-party administrator has made
47 claims decisions as authorized in this chapter, they shall
48 provide claimants notice of all claims decisions as pro-
49 vided by rules for self-administration promulgated by the
50 board of managers and shall be bound by each require-
51 ment imposed upon the commission by this article.

52 (c) Where a finding or determination of the commission,
53 the successor to the commission, other private insurance
54 carriers and self-insured employers, whichever is applica-
55 ble, is protested only by the employer, and the employer
56 does not prevail in its protest, and in the event the claim-
57 ant is required to attend a hearing by subpoena or agree-
58 ment of counsel or at the express direction of the commis-
59 sion or office of judges, then the claimant in addition to
60 reasonable traveling and other expenses shall be reim-
61 bursed for loss of wages incurred by the claimant in
62 attending the hearing.

63 (d) The commission, the successor to the commission,
64 other private insurance carriers and self-insured employ-
65 ers, whichever is applicable may amend, correct or set

66 aside any order or decision on any issue entered by it
67 which, at the time of issuance or any time thereafter, is
68 discovered to be defective or clearly erroneous or the result
69 of mistake, clerical error or fraud, or otherwise not
70 supported by the evidence. Jurisdiction to take this action
71 continues until the expiration of two years from the date
72 of entry of an order unless the order is sooner affected by
73 appellate action: *Provided*, That corrective actions in the
74 case of fraud may be taken at any time.

75 (e) All objections to orders of the commission, the
76 successor to the commission, other private insurance
77 carriers and self-insured employers, whichever is applica-
78 ble shall be styled in the name of the issuing entity. All
79 appeals prosecuted from the office of judges shall be in the
80 name of the issuing party. In all actions under this article,
81 the workers' compensation commission shall be the party
82 in interest unless the parties to the appeal are limited to a
83 claimant and a self-insured employer.

**§23-5-2. Application by employee for further adjustment of
claim; objection to modification; hearing.**

1 In any case where an injured employee makes applica-
2 tion in writing for a further adjustment of his or her claim
3 under the provisions of section sixteen, article four of this
4 chapter and the application discloses cause for a further
5 adjustment, the commission shall, after due notice to the
6 employer, make the modifications, or changes with respect
7 to former findings or orders in the claim that are justified.
8 Any party dissatisfied with any modification or change
9 made by the commission, the successor to the commission,
10 other private insurance carriers and self-insured employ-
11 ers, whichever is applicable, is, upon proper and timely
12 objection, entitled to a hearing, as provided in section nine
13 of this article.

§23-5-3. Refusal to reopen claim; notice; objection.

1 If it appears to the commission, the successor to the
2 commission, other private insurance carriers and self-

3 insured employers, whichever is applicable, that an
4 application filed under section two of this article fails to
5 disclose a progression or aggravation in the claimant's
6 condition, or some other fact or facts which were not
7 previously considered in its former findings and which
8 would entitle the claimant to greater benefits than the
9 claimant has already received, the commission, the
10 successor to the commission, other private insurance
11 carriers and self-insured employers, whichever is applica-
12 ble, shall, within a reasonable time, notify the claimant
13 and the employer that the application fails to establish a
14 prima facie cause for reopening the claim. The notice shall
15 be in writing stating the reasons for denial and the time
16 allowed for objection to the decision of the commission.
17 The claimant may, within thirty days after receipt of the
18 notice, object in writing to the finding. Unless the objec-
19 tion is filed within the thirty-day period, no objection shall
20 be allowed. This time limitation is a condition of the right
21 to objection and hence jurisdictional. Upon receipt of an
22 objection, the office of judges shall afford the claimant an
23 evidentiary hearing as provided in section nine of this
24 article.

**§23-5-4. Application by employer for modification of award;
objection to modification; hearing.**

1 In any case in which an employer makes application in
2 writing for a modification of any award previously made
3 to an employee of the employer, the commission, the
4 successor to the commission, other private insurance
5 carriers and self-insured employers, whichever is applica-
6 ble, shall make a decision upon the application. If the
7 application discloses cause for a further adjustment, the
8 commission, the successor to the commission, other private
9 insurance carriers and self-insured employers, whichever
10 is applicable, shall, after due notice to the employee, make
11 the modifications or changes with respect to former
12 findings or orders that are justified. Any party dissatisfied
13 with any modification or change made or by the denial of
14 an application for modification is, upon proper and timely

15 objection, entitled to a hearing as provided in section nine
16 of this article.

§23-5-5. Refusal of modification; notice; objection.

1 If in any case it appears to the commission, the successor
2 to the commission, other private insurance carriers and
3 self-insured employers, whichever is applicable, that the
4 application filed pursuant to section four of this article
5 fails to disclose some fact or facts which were not previ-
6 ously considered by the commission in its former findings,
7 and which would entitle the employer to any modification
8 of the previous award, the commission the successor to the
9 commission, other private insurance carriers and self-
10 insured employers, whichever is applicable, shall, within
11 sixty days from the receipt of the application, notify the
12 claimant and employer that the application fails to
13 establish a just cause for modification of the award. The
14 notice shall be in writing stating the reasons for denial and
15 the time allowed for objection to the decision of the
16 commission, the successor to the commission, other private
17 insurance carriers and self-insured employers, whichever
18 is applicable. The employer may, within thirty days after
19 receipt of the notice, object in writing to the decision.
20 Unless the objection is filed within the thirty-day period,
21 no objection shall be allowed. This time limitation is a
22 condition of the right to objection and hence jurisdic-
23 tional. Upon receipt of the objection, the office of judges
24 shall afford the employer an evidentiary hearing as
25 provided in section nine of this article.

§23-5-7. Compromise and settlement.

1 With the exception of medical benefits for
2 nonorthopedic occupational disease claims, the claimant,
3 the employer and the workers' compensation commission,
4 the successor to the commission, other private insurance
5 carriers and self-insured employers, whichever is applica-
6 ble, may negotiate a final settlement of any and all issues
7 in a claim wherever the claim is in the administrative or

8 appellate processes. If the employer is not active in the
9 claim, the commission, the successor to the commission,
10 other private insurance carriers and self-insured employ-
11 ers, whichever is applicable, may negotiate a final settle-
12 ment of any and all issues in a claim except for medical
13 benefits for nonorthopedic occupational disease claims
14 with the claimant and said settlement shall be made a part
15 of the claim record. Except in cases of fraud, no issue that
16 is the subject of an approved settlement agreement may be
17 reopened by any party, including the commission, the
18 successor to the commission, other private insurance
19 carriers and self-insured employers, whichever is applica-
20 ble. Any settlement agreement may provide for a lump-
21 sum payment or a structured payment plan, or any combi-
22 nation thereof, or any other basis as the parties may agree.
23 If a self-insured employer later fails to make an agreed-
24 upon payment, the commission shall assume the obligation
25 to make the payments and shall recover the amounts paid
26 or to be paid from the self-insurer employer and its certies
27 or guarantors or both as provided in section five and five-
28 a, article two of this chapter.

29 Each settlement agreement shall provide the toll free
30 number of the West Virginia State Bar Association and
31 shall provide the injured worker with five business days to
32 revoke the executed agreement. The insurance commis-
33 sioner may void settlement agreements entered into by an
34 unrepresented injured worker which are determined to be
35 unconscionable pursuant to criteria established by rule of
36 the commissioner.

37 The amendments to this section enacted during the
38 regular session of the Legislature in the year one thousand
39 nine hundred ninety-nine shall apply to all settlement
40 agreements executed after the effective date.

**§23-5-8. Designation of office of administrative law judges;
powers of chief administrative law judge.**

1 (a) The workers' compensation office of administrative
2 law judges previously created pursuant to chapter twelve,

3 acts of the Legislature, one thousand nine hundred ninety,
4 second extraordinary session, is hereby continued and
5 designated to be an integral part of the workers' compen-
6 sation system of this state. The office of judges shall be
7 under the supervision of a chief administrative law judge
8 who shall be appointed by the governor with the advice
9 and consent of the Senate.

10 (b) The chief administrative law judge shall be a person
11 who has been admitted to the practice of law in this state
12 and shall also have had at least four years of experience as
13 an attorney. The chief administrative law judge's salary
14 shall be set by the workers' compensation board of manag-
15 ers. The salary shall be within the salary range for compa-
16 rable chief administrative law judges as determined by the
17 state personnel board created by section six, article six,
18 chapter twenty-nine of this code. The chief administrative
19 law judge may only be removed by a vote of two-thirds of
20 the members of the workers' compensation board of
21 managers. Upon transfer of the office of judges to the
22 insurance commissioner, the chief administrative law
23 judge shall continue to serve as chief administrative law
24 judge until the thirty-first day of December, two thousand
25 seven. Thereafter, appointments of the chief administra-
26 tive law judge shall be for terms of four years beginning
27 the first day of January, two thousand eight, and the chief
28 administrative law judge may be removed only for cause
29 by the vote of four members of the Industrial Council. No
30 other provision of this code purporting to limit the term of
31 office of any appointed official or employee or affecting
32 the removal of any appointed official or employee is
33 applicable to the chief administrative law judge.

34 (c) The chief administrative law judge shall employ
35 administrative law judges and other personnel that are
36 necessary for the proper conduct of a system of adminis-
37 trative review of orders issued by the workers' compensa-
38 tion commission which orders have been objected to by a
39 party. The employees shall be in the classified service of

40 the state. Qualifications, compensation and personnel
41 practice relating to the employees of the office of judges,
42 other than the chief administrative law judge, shall be
43 governed by the provisions of this code and rules of the
44 classified service pursuant to article six, chapter twenty-
45 nine of this code. All additional administrative law judges
46 shall be persons who have been admitted to the practice of
47 law in this state and shall also have had at least two years
48 of experience as an attorney. The chief administrative law
49 judge shall supervise the other administrative law judges
50 and other personnel which collectively shall be referred to
51 in this chapter as the office of judges.

52 (d) The administrative expense of the office of judges
53 shall be included within the annual budget of the workers'
54 compensation commission and, upon termination of the
55 commission, the insurance commissioner.

56 (e) The office of judges shall, from time to time, promul-
57 gate rules of practice and procedure for the hearing and
58 determination of all objections to findings or orders of the
59 workers' compensation commission. The office of judges
60 shall not have the power to initiate or to promulgate
61 legislative rules as that phrase is defined in article three,
62 chapter twenty-nine-a of this code. Any rules adopted
63 pursuant to this section which are applicable to the
64 provisions of this article are not subject to sections nine
65 through sixteen, inclusive, article three, chapter twenty-
66 nine-a of this code. The office of judges shall follow the
67 remaining provisions of said chapter for giving notice to
68 the public of its actions and the holding of hearings or
69 receiving of comments on the rules.

70 (f) The chief administrative law judge has the power to
71 hear and determine all disputed claims in accordance with
72 the provisions of this article, establish a procedure for the
73 hearing of disputed claims, take oaths, examine witnesses,
74 issue subpoenas, establish the amount of witness fees, keep
75 records and make reports that are necessary for disputed
76 claims and exercise any additional powers, including the

77 delegation of powers to administrative law judges or
78 hearing examiners that are necessary for the proper
79 conduct of a system of administrative review of disputed
80 claims. The chief administrative law judge shall make
81 reports that are requested of him or her by the workers'
82 compensation board of managers.

83 (g) Effective upon termination of the commission, the
84 office of judges and the board of review shall be trans-
85 ferred to the insurance commissioner, which shall have
86 the oversight and administrative authority heretofore
87 provided to the executive director and the board of
88 managers.

**§23-5-9. Hearings on objections to commission or self-insured
employer decisions; mediation; remand.**

1 (a) Objections to a decision of the workers' compensation
2 commission, the successor to the commission, other private
3 insurance carriers and self-insured employers, whichever
4 is applicable, made pursuant to the provisions of section
5 one of this article shall be filed with the office of judges.
6 Upon receipt of an objection, the office of judges shall
7 notify the commission, the successor to the commission,
8 other private insurance carriers and self-insured employ-
9 ers, whichever is applicable, and all other parties of the
10 filing of the objection. The office of judges shall establish
11 by rule promulgated in accordance with the provisions of
12 subsection (e), section eight of this article an adjudicatory
13 process that enables parties to present evidence in support
14 of their positions and provides an expeditious resolution
15 of the objection. The employer, the claimant and the
16 commission, the successor to the commission, other private
17 insurance carriers and self-insured employers, whichever
18 is applicable, shall be notified of any hearing at least ten
19 days in advance. The office of judges shall review and
20 amend, or modify, as necessary its procedural rules by the
21 first day of July, two thousand seven.

22 (b) The office of judges shall establish a program for
23 mediation to be conducted in accordance with the require-
24 ments of rule twenty-five of the West Virginia trial court
25 rules. The parties may agree that the result of the media-
26 tion is binding. A case may be referred to mediation by
27 the administrative law judge on his or her own motion, on
28 motion of a party or by agreement of the parties. Upon
29 issuance of an order for mediation, the office of judges
30 shall assign a mediator from a list of qualified mediators
31 maintained by the West Virginia state bar.

32 (c) The office of judges shall keep full and complete
33 records of all proceedings concerning a disputed claim.
34 Subject to the rules of practice and procedure promulgated
35 pursuant to section eight of this article, the record upon
36 which the matter shall be decided shall include any
37 evidence submitted by a party to the office of judges,
38 evidence taken at hearings conducted by the office of
39 judges and any documents in the claim files which relate
40 to the subject matter of the objection. The record may
41 include evidence or documents submitted in electronic
42 form or other appropriate medium in accordance with the
43 rules of practice and procedure. The office of judges is not
44 bound by the usual common law or statutory rules of
45 evidence.

46 (d) All hearings shall be conducted as determined by the
47 chief administrative law judge pursuant to the rules of
48 practice and procedure promulgated pursuant to section
49 eight of this article. Upon consideration of the designated
50 record, the chief administrative law judge or other autho-
51 rized adjudicator within the office of judges shall, based
52 on the determination of the facts of the case and applica-
53 ble law, render a decision affirming, reversing or modify-
54 ing the action protested. The decision shall contain
55 findings of fact and conclusions of law and shall be mailed
56 to all parties.

57 (e) The rule authorized by subsection (a) of this section
58 shall be promulgated on or before the first day of October,

59 two thousand three. Until the rule is promulgated, any
60 rules previously promulgated shall remain in full force and
61 effect.

62 (f) The office of judges may remand a claim to the
63 commission, the successor to the commission, other private
64 insurance carriers and self-insured employers, whichever
65 is applicable, for further development of the facts or
66 administrative matters as, in the opinion of the adminis-
67 trative law judge, may be necessary for a full and complete
68 disposition of the case. The administrative law judge shall
69 establish a time within which the commission, the succes-
70 sor to the commission, other private insurance carriers and
71 self-insured employers, whichever is applicable, must
72 report back to the administrative law judge.

73 (g) The decision of the workers' compensation office of
74 judges regarding any objections to a decision of the work-
75 ers' compensation commission, the successor to the
76 commission, other private insurance carriers and self-
77 insured employers, whichever is applicable, is final and
78 benefits shall be paid or denied in accordance with the
79 decision unless the decision is subsequently appealed and
80 reversed in accordance with the procedures set forth in
81 this article.

**§23-5-10. Appeal from administrative law judge decision to
appeal board.**

1 The employer, claimant, workers' compensation commis-
2 sion, the successor to the commission, other private
3 insurance carriers and self-insured employers, whichever
4 is applicable, may appeal to the appeal board created in
5 section eleven of this article for a review of a decision by
6 an administrative law judge. No appeal or review shall lie
7 unless application therefor be made within thirty days of
8 receipt of notice of the administrative law judge's final
9 action or in any event within sixty days of the date of such
10 final action, regardless of notice and, unless the applica-
11 tion for appeal or review is filed within the time specified,

12 no such appeal or review shall be allowed, such time
13 limitation being hereby declared to be a condition of the
14 right of such appeal or review and hence jurisdictional.

§23-5-11. Workers' compensation board of review generally.

1 (a) On the thirty-first day of January, two thousand four,
2 the workers' compensation appeal board heretofore
3 established in this section is hereby abolished.

4 (b) There is hereby created the "workers' compensation
5 board of review", which may also be referred to as "the
6 board of review" or "the board". Effective the first day of
7 February, two thousand four, the board of review shall
8 exercise exclusive jurisdiction over all appeals from the
9 workers' compensation office judges including any and all
10 appeals pending with the board of appeals on the thirty-
11 first day of January, two thousand four.

12 (c) The board shall consist of three members.

13 (d) The governor shall appoint, from names submitted by
14 the "workers' compensation board of review nominating
15 committee", with the advice and consent of the Senate,
16 three qualified attorneys to serve as members of the board
17 of review. If the governor does not select a nominee for
18 any vacant position from the names provided by the
19 nominating committee, he shall notify the nominating
20 committee of that circumstance and the committee shall
21 provide additional names for consideration by the gover-
22 nor. A member of the board of review may be removed by
23 the governor for official misconduct, incompetence,
24 neglect of duty, gross immorality or malfeasance and then
25 only after notice and opportunity to respond and present
26 evidence. No more than two of the members of the board
27 may be of the same political party. The members of the
28 board of review shall be paid an annual salary of eighty-
29 five thousand dollars. Members are entitled to be reim-
30 bursed for actual and necessary travel expenses incurred
31 in the discharge of official duties in a manner consistent

32 with the guidelines of the travel management office of the
33 department of administration.

34 (e) The nominating committee shall consist of the
35 following members: (1) The president of the West Virginia
36 state bar who will serve as the chairperson of the commit-
37 tee; (2) an active member of the West Virginia state bar
38 workers' compensation committee selected by the major
39 trade association representing employers in this state; (3)
40 an active member of the West Virginia state bar workers'
41 compensation committee selected by the highest ranking
42 officer of the major employee organization representing
43 workers in this state; (4) the dean of the West Virginia
44 university school of law; and (5) the chairman of the
45 judicial investigation committee.

46 (f) The nominating committee is responsible for review-
47 ing and evaluating candidates for possible appointment to
48 the board of review by the governor. In reviewing candi-
49 dates, the nominating committee may accept comments
50 from and request information from any person or source.

51 (g) Each member of the nominating committee may
52 submit up to three names of qualified candidates for each
53 position on the board of review: *Provided*, That the
54 member of the nominating committee selected by the
55 major trade organization representing employers of this
56 state shall submit at least one name of a qualified candi-
57 date for each position on the board who either is, or who
58 represents, small business employers of this state. After
59 careful review of the candidates, the committee shall select
60 a minimum of one candidate for each position on the
61 board.

62 (h) No later than the first day of November, two thou-
63 sand three, the nominating committee shall present to the
64 governor its list of candidates for the initial board of
65 review. The governor shall appoint the initial board no
66 later than the thirty-first day of December, two thousand
67 three: *Provided*, That upon the thirty-first day of Decem-

68 ber, two thousand three, the deadline for filling all posi-
69 tions of the board of review will be extended, as necessary,
70 if, on or before that date, the governor has timely re-
71 quested additional names from the nominating committee.
72 Thereafter, the nominating committee shall meet at the
73 request of the governor in order to make timely recom-
74 mendations to the governor for appointees to the board as
75 the initial and subsequent terms expire or become vacant.
76 The recommendations shall be submitted no later than
77 thirty days prior to the expiration of any term.

78 (i) Of the initial appointments, one member shall be
79 appointed for a term ending the thirty-first day of Decem-
80 ber, two thousand six; one member shall be appointed for
81 a term ending the thirty-first day of December, two
82 thousand eight; and one member shall be appointed for a
83 term ending the thirty-first day of December, two thou-
84 sand ten. Thereafter, the appointments shall be for six-
85 year terms.

86 (j) A member of the board of review must, at the time he
87 or she takes office and thereafter during his or her contin-
88 uance in office, be a resident of this state, be a member in
89 good standing of the West Virginia state bar, have a
90 minimum of ten years' experience as an attorney admitted
91 to practice law in this state prior to appointment and have
92 a minimum of five years' experience in preparing and
93 presenting cases or hearing actions and making decisions
94 on the basis of the record of those hearings before admin-
95 istrative agencies, regulatory bodies or courts of record at
96 the federal, state or local level.

97 (k) No member of the board of review may hold any
98 other office, or accept any appointment or public trust, nor
99 may he or she become a candidate for any elective public
100 office or nomination thereto. Violation of this subsection
101 requires the member to vacate his or her office. No
102 member of the board of review may engage in the practice
103 of law during his or her term of office.

104 (l) A vacancy occurring on the board other than by
105 expiration of a term shall be filled in the manner original
106 appointments were made, for the unexpired portion of the
107 term.

108 (m) The board shall designate one of its members in
109 rotation to be chairman of the board for as long as the
110 board may determine by order made and entered of record.
111 In the absence of the chairman, any other member desig-
112 nated by the members present shall act as chairman.

113 (n) The board of review shall meet as often as necessary
114 to hold review hearings, at such times and places as the
115 chairman may determine. Two members shall be present
116 in order to conduct review hearings or other business. All
117 decisions of the board shall be determined by a majority of
118 the members of the board.

119 (o) The board of review shall make general rules regard-
120 ing the pleading, including the form of the petition and
121 any responsive pleadings, practice and procedure to be
122 used by the board.

123 (p) The board of review may hire a clerk and other
124 professional and clerical staff necessary to carry out the
125 requirements of this article. It is the duty of the clerk of
126 the board of review to attend in person, or by deputy, all
127 the sessions of the board, to obey its orders and directions,
128 to take care of and preserve in an office, kept for the
129 purpose, all records and papers of the board and to
130 perform other duties as prescribed by law or required of
131 him or her by the board. All employees of the board shall
132 serve at the will and pleasure of the board. The board's
133 employees are exempt from the salary schedule or pay
134 plan adopted by the division of personnel. All personnel
135 of the board of review shall be under the supervision of the
136 chairman of the board of review.

137 (q) If deemed necessary by the board, the board may,
138 through staffing or other resources, procure assistance in
139 review of medical portions of decisions.

140 (r) Upon the conclusion of any hearing, or prior thereto
141 with concurrence of the parties, the member shall
142 promptly determine the matter and make an award in
143 accordance with his or her determination.

144 (s) The award shall become a part of the commission file.
145 A copy of the award shall be sent forthwith by mail to all
146 parties in interest.

147 (t) The award is final when entered. The award shall
148 contain a statement explaining the rights of the parties to
149 an appeal to the board of review and the applicable time
150 limitations involved.

151 (u) The board shall submit a budget to the executive
152 director for inclusion in the budget for the workers'
153 compensation commission sufficient to adequately provide
154 for the administrative and other operating expenses of the
155 board.

156 (v) The board shall report monthly to the board of
157 managers on the status of all claims on appeal.

158 (w) Effective upon termination of the commission, the
159 board of review shall be transferred to the insurance
160 commissioner which shall have the oversight and adminis-
161 trative authority heretofore provided to the executive
162 director and the board of managers.

**§23-5-12. Appeal to board; procedure; remand and supplement-
tal hearing.**

1 (a) Any employer, employee, claimant or dependent, who
2 shall feel aggrieved at any final action of the administra-
3 tive law judge taken after a hearing held in accordance
4 with the provisions of section nine of this article, shall
5 have the right to appeal to the board created in section
6 eleven of this article for a review of such action. The
7 workers' compensation commission, the successor to the
8 commission, other private insurance carriers and self-
9 insured employers, whichever is applicable, shall likewise

10 have the right to appeal to the board any final action
11 taken by the administrative law judge. The aggrieved
12 party shall file a written notice of appeal with the office of
13 judges directed to the board, within thirty days after
14 receipt of notice of the action complained of, or in any
15 event, regardless of notice, within sixty days after the date
16 of the action complained of, and unless the notice of
17 appeal is filed within the time specified, no appeal shall be
18 allowed, the time limitation is a condition of the right to
19 appeal and hence jurisdictional. The office of judges shall
20 notify the other parties immediately upon the filing of a
21 notice of appeal. The notice of appeal shall state the
22 ground for review and whether oral argument is requested.
23 The office of judges shall forthwith make up a transcript
24 of the proceedings before the office of judges and certify
25 and transmit it to the board. The certificate shall incorpo-
26 rate a brief recital of the proceedings in the case and recite
27 each order entered and the date thereof.

28 (b) The board shall set a time and place for the hearing
29 of arguments on each claim and shall notify the interested
30 parties thereof. The review by the board shall be based
31 upon the record submitted to it and such oral argument as
32 may be requested and received. The board may affirm,
33 reverse, modify or supplement the decision of the adminis-
34 trative law judge and make such disposition of the case as
35 it determines to be appropriate. Briefs may be filed by the
36 interested parties in accordance with the rules of procc-
37 dure prescribed by the board. The board may affirm the
38 order or decision of the administrative law judge or
39 remand the case for further proceedings. It shall reverse,
40 vacate or modify the order or decision of the administra-
41 tive law judge if the substantial rights of the petitioner or
42 petitioners have been prejudiced because the administra-
43 tive law judge's findings are:

44 (1) In violation of statutory provisions; or

45 (2) In excess of the statutory authority or jurisdiction of
46 the administrative law judge; or

47 (3) Made upon unlawful procedures; or

48 (4) Affected by other error of law; or

49 (5) Clearly wrong in view of the reliable, probative and
50 substantial evidence on the whole record; or

51 (6) Arbitrary or capricious or characterized by abuse of
52 discretion or clearly unwarranted exercise of discretion.

53 (c) After a review of the case, the board shall issue a
54 written decision to be filed with the commission and a
55 copy thereof sent by mail to the parties.

56 (1) All decisions, findings of fact and conclusions of law
57 of the board of review shall be in writing and state with
58 specificity the laws and facts relied upon to sustain,
59 reverse or modify the administrative law judge's decision.

60 (2) Decisions of the board of review shall be made by a
61 majority vote of the board of review.

62 (3) A decision of the board of review is binding upon the
63 executive director and the commission and the successor
64 to the commission, other private insurance carriers and
65 self-insured employers, whichever is applicable, with
66 respect to the parties involved in the particular appeal.
67 The executive director, the successor to the commission,
68 other private insurance carriers and self-insured employ-
69 ers, whichever is applicable, shall have the right to seek
70 judicial review of a board of review decision irrespective
71 of whether or not he or she appeared or participated in the
72 appeal to the board of review.

73 (d) Instead of affirming, reversing or modifying the
74 decision of the administrative law judge, the board may,
75 upon motion of any party or upon its own motion, for good
76 cause shown, to be set forth in the order of the board,
77 remand the case to the chief administrative law judge for
78 the taking of such new, additional or further evidence as
79 in the opinion of the board may be necessary for a full and
80 complete development of the facts of the case. In the event

81 the board shall remand the case to the chief administrative
82 law judge for the taking of further evidence, the adminis-
83 trative law judge shall proceed to take new, additional or
84 further evidence in accordance with any instruction given
85 by the board within thirty days after receipt of the order
86 remanding the case. The chief administrative law judge
87 shall give to the interested parties at least ten days'
88 written notice of the supplemental hearing, unless the
89 taking of evidence is postponed by agreement of parties, or
90 by the administrative law judge for good cause. After the
91 completion of a supplemental hearing, the administrative
92 law judge shall, within sixty days, render his or her
93 decision affirming, reversing or modifying the former
94 action of the administrative law judge. The decision shall
95 be appealable to, and proceeded with by the board of
96 review in the same manner as other appeals. In addition,
97 upon a finding of good cause, the board may remand the
98 case to the workers' compensation commission, the
99 successor to the commission, other private insurance
100 carriers and self-insured employers, whichever is applica-
101 ble, for further development. Any decision made by the
102 commission, the successor to the commission, other private
103 insurance carriers and self-insured employers, whichever
104 applicable, following a remand shall be subject to objec-
105 tion to the office of judges and not to the board. The
106 board may remand any case as often as in its opinion is
107 necessary for a full development and just decision of the
108 case.

109 (e) All appeals from the action of the administrative law
110 judge shall be decided by the board at the same session at
111 which they are heard, unless good cause for delay thereof
112 be shown and entered of record.

113 (f) In all proceedings before the board, any party may be
114 represented by counsel.

**§23-5-15. Appeals from final decisions of board to supreme
court of appeals; procedure; costs.**

1 (a) Review of any final decision of the board, including
2 any order of remand, may be prosecuted by either party or
3 by the workers' compensation commission, the successor
4 to the commission, other private insurance carriers and
5 self-insured employers, whichever is applicable, to the
6 supreme court of appeals within thirty days from the date
7 of the final order by filing a petition therefor with the
8 court against the board and the adverse party or parties as
9 respondents. Unless the petition for review is filed within
10 the thirty-day period, no appeal or review shall be al-
11 lowed, such time limitation is a condition of the right to
12 such appeal or review and hence jurisdictional. The clerk
13 of the supreme court of appeals shall notify each of the
14 respondents and the workers' compensation commission,
15 the successor to the commission, other private insurance
16 carriers and self-insured employers, whichever is applica-
17 ble, of the filing of such petition. The board shall, within
18 ten days after receipt of the notice, file with the clerk of
19 the court the record of the proceedings had before it,
20 including all the evidence. The court or any judge thereof
21 in vacation may thereupon determine whether or not a
22 review shall be granted. If review is granted to a nonresi-
23 dent of this state, he or she shall be required to execute
24 and file with the clerk before an order or review shall
25 become effective, a bond, with security to be approved by
26 the clerk, conditioned to perform any judgment which may
27 be awarded against him or her. The board may certify to
28 the court and request its decision of any question of law
29 arising upon the record, and withhold its further proceed-
30 ing in the case, pending the decision of court on the
31 certified question, or until notice that the court has
32 declined to docket the same. If a review is granted or the
33 certified question is docketed for hearing, the clerk shall
34 notify the board and the parties litigant or their attorneys
35 and the workers' compensation commission, the successor
36 to the commission, other private insurance carriers and
37 self-insured employers, whichever is applicable, of that
38 fact by mail. If a review is granted or the certified ques-

39 tion docketed, the case shall be heard by the court in the
40 same manner as in other cases, except that neither the
41 record nor briefs need be printed. Every review granted or
42 certified question docketed prior to thirty days before the
43 beginning of the term, shall be placed upon the docket for
44 that term. The attorney general shall, without extra
45 compensation, represent the board in such cases. The
46 court shall determine the matter brought before it and
47 certify its decision to the board and to the commission.
48 The cost of the proceedings on petition, including a
49 reasonable attorney's fee, not exceeding thirty dollars to
50 the claimant's attorney, shall be fixed by the court and
51 taxed against the employer if the latter is unsuccessful. If
52 the claimant, or the commission (in case the latter is the
53 applicant for review) is unsuccessful, the costs, not inclu-
54 ding attorney's fees, shall be taxed against the commission,
55 payable out of the workers' compensation fund, or shall be
56 taxed against the claimant, in the discretion of the court.
57 But there shall be no cost taxed upon a certified question.

58 (b) In reviewing a decision of the board of review, the
59 supreme court of appeals shall consider the record pro-
60 vided by the board and give deference to the board's
61 findings, reasoning and conclusions, in accordance with
62 subsections (c) and (d) of this section.

63 (c) If the decision of the board represents an affirmation
64 of a prior ruling by both the commission and the office of
65 judges that was entered on the same issue in the same
66 claim, the decision of the board may be reversed or
67 modified by the supreme court of appeals only if the
68 decision is in clear violation of constitutional or statutory
69 provision, is clearly the result of erroneous conclusions of
70 law, or is based upon the board's material misstatement or
71 mischaracterization of particular components of the
72 evidentiary record. The court may not conduct a de novo
73 re-weighing of the evidentiary record. If the court reverses
74 or modifies a decision of the board pursuant to this
75 subsection, it shall state with specificity the basis for the

76 reversal or modification and the manner in which the
77 decision of the board clearly violated constitutional or
78 statutory provisions, resulted from erroneous conclusions
79 of law, or was based upon the board's material misstate-
80 ment or mischaracterization of particular components of
81 the evidentiary record.

82 (d) If the decision of the board effectively represents a
83 reversal of a prior ruling of either the commission or the
84 office of judges that was entered on the same issue in the
85 same claim, the decision of the board may be reversed or
86 modified by the supreme court of appeals only if the
87 decision is in clear violation of constitutional or statutory
88 provisions, is clearly the result of erroneous conclusions of
89 law, or is so clearly wrong based upon the evidentiary
90 record that even when all inferences are resolved in favor
91 of the board's findings, reasoning and conclusions, there is
92 insufficient support to sustain the decision. The court may
93 not conduct a de novo re-weighing of the evidentiary
94 record. If the court reverses or modifies a decision of the
95 board pursuant to this subsection, it shall state with
96 specificity the basis for the reversal or modification and
97 the manner in which the decision of the board clearly
98 violated constitutional or statutory provisions, resulted
99 from erroneous conclusions of law, or was so clearly wrong
100 based upon the evidentiary record that even when all
101 inferences are resolved in favor of the board's findings,
102 reasoning and conclusions, there is insufficient support to
103 sustain the decision.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission

control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

1 (a) The commission shall provide to manufacturers, or
2 applicants applying for a manufacturer's permit, the
3 protocol documentation data necessary to enable the
4 respective manufacturer's video lottery terminals to
5 communicate with the commission's central computer for
6 transmitting auditing program information and for
7 activation and disabling of video lottery terminals.

8 (b) The gross terminal income of a licensed racetrack
9 shall be remitted to the commission through the electronic
10 transfer of funds. Licensed racetracks shall furnish to the
11 commission all information and bank authorizations
12 required to facilitate the timely transfer of moneys to the
13 commission. Licensed racetracks must provide the
14 commission thirty days' advance notice of any proposed
15 account changes in order to assure the uninterrupted
16 electronic transfer of funds. From the gross terminal
17 income remitted by the licensee to the commission, the
18 commission shall deduct an amount sufficient to reim-
19 burse the commission for its actual costs and expenses
20 incurred in administering racetrack video lottery at the
21 licensed racetrack, and the resulting amount after the
22 deduction is the net terminal income. The amount de-
23 ducted for administrative costs and expenses of the
24 commission may not exceed four percent of gross terminal
25 income: *Provided*, That any amounts deducted by the
26 commission for its actual costs and expenses that exceeds
27 its actual costs and expenses shall be deposited into the
28 state lottery fund. For all fiscal years beginning on or
29 after the first day of July, two thousand one, the commis-
30 sion shall not receive an amount of gross terminal income
31 in excess of the amount of gross terminal income received
32 during the fiscal year ending on the thirtieth day of June,
33 two thousand one, but four percent of any amount of gross

34 terminal income received in excess of the amount of gross
35 terminal income received during the fiscal year ending on
36 the thirtieth day of June, two thousand one, shall be
37 deposited into the fund established in section eighteen-a,
38 article twenty-two of this chapter.

39 (c) Net terminal income shall be divided as set out in this
40 subsection. For all fiscal years beginning on or after the
41 first day of July, two thousand one, any amount of net
42 terminal income received in excess of the amount of net
43 terminal income received during the fiscal year ending on
44 the thirtieth day of June, two thousand one, shall be
45 divided as set out in section ten-b of this article. The
46 licensed racetrack's share is in lieu of all lottery agent
47 commissions and is considered to cover all costs and
48 expenses required to be expended by the licensed race-
49 track in connection with video lottery operations. The
50 division shall be made as follows:

51 (1) The commission shall receive thirty percent of net
52 terminal income, which shall be paid into the state lottery
53 fund as provided in section ten-a of this article;

54 (2) Until the first day of July, two thousand five, four-
55 teen percent of net terminal income at a licensed racetrack
56 shall be deposited in the special fund established by the
57 licensee, and used for payment of regular purses in addi-
58 tion to other amounts provided for in article twenty-three,
59 chapter nineteen of this code, on and after the first day of
60 July, two thousand five, the rate shall be seven percent of
61 net terminal income;

62 (3) The county where the video lottery terminals are
63 located shall receive two percent of the net terminal
64 income: *Provided, That:*

65 (A) Beginning the first day of July, one thousand nine
66 hundred ninety-nine, and thereafter, any amount in excess
67 of the two percent received during the fiscal year one
68 thousand nine hundred ninety-nine by a county in which

69 a racetrack is located that has participated in the West
70 Virginia thoroughbred development fund since on or
71 before the first day of January, one thousand nine hundred
72 ninety-nine shall be divided as follows:

73 (i) The county shall receive fifty percent of the excess
74 amount; and

75 (ii) The municipalities of the county shall receive fifty
76 percent of the excess amount, said fifty percent to be
77 divided among the municipalities on a per capita basis as
78 determined by the most recent decennial United States
79 census of population; and

80 (B) Beginning the first day of July, one thousand nine
81 hundred ninety-nine, and thereafter, any amount in excess
82 of the two percent received during the fiscal year one
83 thousand nine hundred ninety-nine by a county in which
84 a racetrack other than a racetrack described in paragraph
85 (A) of this proviso is located and where the racetrack has
86 been located in a municipality within the county since on
87 or before the first day of January, one thousand nine
88 hundred ninety-nine shall be divided, if applicable, as
89 follows:

90 (i) The county shall receive fifty percent of the excess
91 amount; and

92 (ii) The municipality shall receive fifty percent of the
93 excess amount; and

94 (C) This proviso shall not affect the amount to be
95 received under this subdivision by any other county other
96 than a county described in paragraph (A) or (B) of this
97 proviso;

98 (4) One half of one percent of net terminal income shall
99 be paid for and on behalf of all employees of the licensed
100 racing association by making a deposit into a special fund
101 to be established by the racing commission to be used for

102 payment into the pension plan for all employees of the
103 licensed racing association;

104 (5) The West Virginia thoroughbred development fund
105 created under section thirteen-b, article twenty-three,
106 chapter nineteen of this code and the West Virginia
107 greyhound breeding development fund created under
108 section ten of said article shall receive an equal share of a
109 total of not less than one and one-half percent of the net
110 terminal income: *Provided*, That for any racetrack which
111 does not have a breeder's program supported by the
112 thoroughbred development fund or the greyhound breed-
113 ing development fund, the one and one-half percent
114 provided for in this subdivision shall be deposited in the
115 special fund established by the licensee and used for
116 payment of regular purses, in addition to other amounts
117 provided in subdivision (2) of this subsection and article
118 twenty-three, chapter nineteen of this code.

119 (6) The West Virginia racing commission shall receive
120 one percent of the net terminal income which shall be
121 deposited and used as provided in section thirteen-c,
122 article twenty-three, chapter nineteen of this code.

123 (7) A licensee shall receive forty-seven percent of net
124 terminal income.

125 (8) (A) The tourism promotion fund established in
126 section twelve, article two, chapter five-b of this code shall
127 receive three percent of the net terminal income: *Provided*,
128 That for the fiscal year beginning the first day of July, two
129 thousand three, the tourism commission shall transfer
130 from the tourism promotion fund five million dollars of
131 the three percent of the net terminal income described in
132 this section and section ten-b of this article into the fund
133 administered by the West Virginia economic development
134 authority pursuant to section seven, article fifteen, chapter
135 thirty-one of this code, five million dollars into the capitol
136 renovation and improvement fund administered by the
137 department of administration pursuant to section six,

138 article four, chapter five-a of this code and five million
139 dollars into the tax reduction and federal funding in-
140 creased compliance fund; and

141 (B) Notwithstanding any provision of paragraph (A) of
142 this subdivision to the contrary, for each fiscal year
143 beginning after the thirtieth day of June, two thousand
144 four, this three percent of net terminal income and the
145 three percent of net terminal income described in para-
146 graph (B), subdivision (8), subsection (a), section ten-b of
147 this article shall be distributed as provided in this para-
148 graph as follows:

149 (i) 1.375 percent of the total amount of net terminal
150 income described in this section and in section ten-b of
151 this article shall be deposited into the tourism promotion
152 fund created under section twelve, article two, chapter
153 five-b of this code;

154 (ii) 0.375 percent of the total amount of net terminal
155 income described in this section and in section ten-b of
156 this article shall be deposited into the development office
157 promotion fund created under section three-b, article two,
158 chapter five-b of this code;

159 (iii) 0.5 percent of the total amount of net terminal
160 income described in this section and in section ten-b of
161 this article shall be deposited into the research challenge
162 fund created under section ten, article one-b, chapter
163 eighteen-b of this code;

164 (iv) 0.6875 percent of the total amount of net terminal
165 income described in this section and in section ten-b of
166 this article shall be deposited into the capitol renovation
167 and improvement fund administered by the department of
168 administration pursuant to section six, article four,
169 chapter five-a of this code; and

170 (v) 0.0625 percent of the total amount of net terminal
171 income described in this section and in section ten-b of
172 this article shall be deposited into the 2004 capitol com-

173 plex parking garage fund administered by the department
174 of administration pursuant to section five-a, article four,
175 chapter five-a of this code;

176 (9) On and after the first day of July, two thousand five,
177 seven percent of net terminal income shall be deposited
178 into the workers' compensation debt reduction fund
179 created in section five, article two-d, chapter twenty-three
180 of this code; and

181 (10) The remaining one percent of net terminal income
182 shall be deposited as follows:

183 (A) For the fiscal year beginning the first day of July,
184 two thousand three, the veterans memorial program shall
185 receive one percent of the net terminal income until
186 sufficient moneys have been received to complete the
187 veterans memorial on the grounds of the state capitol
188 complex in Charleston, West Virginia. The moneys shall
189 be deposited in the state treasury in the division of culture
190 and history special fund created under section three,
191 article one-i, chapter twenty-nine of this code: *Provided*,
192 That only after sufficient moneys have been deposited in
193 the fund to complete the veterans memorial and to pay in
194 full the annual bonded indebtedness on the veterans
195 memorial, not more than twenty thousand dollars of the
196 one percent of net terminal income provided for in this
197 subdivision shall be deposited into a special revenue fund
198 in the state treasury, to be known as the "John F. 'Jack'
199 Bennett Fund". The moneys in this fund shall be ex-
200 pended by the division of veterans affairs to provide for
201 the placement of markers for the graves of veterans in
202 perpetual cemeteries in this state. The division of veterans
203 affairs shall promulgate legislative rules pursuant to the
204 provisions of article three, chapter twenty-nine-a of this
205 code specifying the manner in which the funds are spent,
206 determine the ability of the surviving spouse to pay for the
207 placement of the marker and setting forth the standards to
208 be used to determine the priority in which the veterans
209 grave markers will be placed in the event that there are

210 not sufficient funds to complete the placement of veterans
211 grave markers in any one year, or at all. Upon payment in
212 full of the bonded indebtedness on the veterans memorial,
213 one hundred thousand dollars of the one percent of net
214 terminal income provided for in this subdivision shall be
215 deposited in the special fund in the division of culture and
216 history created under section three, article one-i, chapter
217 twenty-nine of this code and be expended by the division
218 of culture and history to establish a West Virginia veterans
219 memorial archives within the cultural center to serve as a
220 repository for the documents and records pertaining to the
221 veterans memorial, to restore and maintain the monu-
222 ments and memorial on the capitol grounds: *Provided,*
223 *however,* That five hundred thousand dollars of the one
224 percent of net terminal income shall be deposited in the
225 state treasury in a special fund of the department of
226 administration, created under section five, article four,
227 chapter five-a of this code, to be used for construction and
228 maintenance of a parking garage on the state capitol
229 complex; and the remainder of the one percent of net
230 terminal income shall be deposited in equal amounts in the
231 capitol dome and improvements fund created under
232 section two, article four, chapter five-a of this code and
233 cultural facilities and capitol resources matching grant
234 program fund created under section three, article one of
235 this chapter.

236 (B) For each fiscal year beginning after the thirtieth day
237 of June, two thousand four:

238 (i) Five hundred thousand dollars of the one percent of
239 net terminal income shall be deposited in the state trea-
240 sury in a special fund of the department of administration,
241 created under section five, article four, chapter five-a of
242 this code, to be used for construction and maintenance of
243 a parking garage on the state capitol complex; and

244 (ii) The remainder of the one percent of net terminal
245 income and all of the one percent of net terminal income
246 described in paragraph (B), subdivision (9), subsection (a),

247 section ten-b of this article twenty-two-a shall be distrib-
248 uted as follows: The net terminal income shall be deposited
249 in equal amounts into the capitol dome and capitol
250 improvements fund created under section two, article four,
251 chapter five-a of this code and the cultural facilities and
252 capitol resources matching grant program fund created
253 under section three, article one, chapter twenty-nine of
254 this code until a total of one million five hundred thousand
255 dollars is deposited into the cultural facilities and capitol
256 resources matching grant program fund; thereafter, the
257 remainder shall be deposited into the capitol dome and
258 capitol improvements fund.

259 (d) Each licensed racetrack shall maintain in its account
260 an amount equal to or greater than the gross terminal
261 income from its operation of video lottery machines, to be
262 electronically transferred by the commission on dates
263 established by the commission. Upon a licensed race-
264 track's failure to maintain this balance, the commission
265 may disable all of a licensed racetrack's video lottery
266 terminals until full payment of all amounts due is made.
267 Interest shall accrue on any unpaid balance at a rate
268 consistent with the amount charged for state income tax
269 delinquency under chapter eleven of this code. The
270 interest shall begin to accrue on the date payment is due to
271 the commission.

272 (e) The commission's central control computers shall keep
273 accurate records of all income generated by each video
274 lottery terminal. The commission shall prepare and mail
275 to the licensed racetrack a statement reflecting the gross
276 terminal income generated by the licensee's video lottery
277 terminals. Each licensed racetrack shall report to the
278 commission any discrepancies between the commission's
279 statement and each terminal's mechanical and electronic
280 meter readings. The licensed racetrack is solely responsi-
281 ble for resolving income discrepancies between actual
282 money collected and the amount shown on the accounting
283 meters or on the commission's billing statement.

284 (f) Until an accounting discrepancy is resolved in favor
285 of the licensed racetrack, the commission may make no
286 credit adjustments. For any video lottery terminal reflect-
287 ing a discrepancy, the licensed racetrack shall submit to
288 the commission the maintenance log which includes
289 current mechanical meter readings and the audit ticket
290 which contains electronic meter readings generated by the
291 terminal's software. If the meter readings and the commis-
292 sion's records cannot be reconciled, final disposition of the
293 matter shall be determined by the commission. Any
294 accounting discrepancies which cannot be otherwise
295 resolved shall be resolved in favor of the commission.

296 (g) Licensed racetracks shall remit payment by mail if
297 the electronic transfer of funds is not operational or the
298 commission notifies licensed racetracks that remittance by
299 this method is required. The licensed racetracks shall
300 report an amount equal to the total amount of cash
301 inserted into each video lottery terminal operated by a
302 licensee, minus the total value of game credits which are
303 cleared from the video lottery terminal in exchange for
304 winning redemption tickets, and remit the amount as
305 generated from its terminals during the reporting period.
306 The remittance shall be sealed in a properly addressed and
307 stamped envelope and deposited in the United States mail
308 no later than noon on the day when the payment would
309 otherwise be completed through electronic funds transfer.

310 (h) Licensed racetracks may, upon request, receive
311 additional reports of play transactions for their respective
312 video lottery terminals and other marketing information
313 not considered confidential by the commission. The
314 commission may charge a reasonable fee for the cost of
315 producing and mailing any report other than the billing
316 statements.

317 (i) The commission has the right to examine all accounts,
318 bank accounts, financial statements and records in a
319 licensed racetrack's possession, under its control or in
320 which it has an interest and the licensed racetrack shall

321 authorize all third parties in possession or in control of the
322 accounts or records to allow examination of any of those
323 accounts or records by the commission.

§29-22A-10b. Distribution of excess net terminal income.

1 (a) For all years beginning on or after the first day of
2 July, two thousand one, any amount of net terminal
3 income generated annually by a licensed racetrack in
4 excess of the amount of net terminal income generated by
5 that licensed racetrack during the fiscal year ending on the
6 thirtieth day of June, two thousand one, shall be divided
7 as follows:

8 (1) The commission shall receive forty-one percent of net
9 terminal income, which the commission shall deposit in
10 the state excess lottery revenue fund created in section
11 eighteen-a, article twenty-two of this chapter;

12 (2) Until the first day of July, two thousand five, eight
13 percent of net terminal income at a licensed racetrack
14 shall be deposited in the special fund established by the
15 licensee and used for payment of regular purses in addi-
16 tion to other amounts provided for in article twenty-three,
17 chapter nineteen of this code; on and after the first day of
18 July, two thousand five, the rate shall be four percent of
19 net terminal income;

20 (3) The county where the video lottery terminals are
21 located shall receive two percent of the net terminal
22 income: *Provided, That:*

23 (A) Any amount by which the total amount under this
24 section and subdivision (3), subsection (c), section ten of
25 this article is in excess of the two percent received during
26 fiscal year one thousand nine hundred ninety-nine by a
27 county in which a racetrack is located that has partici-
28 pated in the West Virginia thoroughbred development
29 fund since on or before the first day of January, one
30 thousand nine hundred ninety-nine, shall be divided as
31 follows:

32 (i) The county shall receive fifty percent of the excess
33 amount; and

34 (ii) The municipalities of the county shall receive fifty
35 percent of the excess amount, the fifty percent to be
36 divided among the municipalities on a per capita basis as
37 determined by the most recent decennial United States
38 census of population; and

39 (B) Any amount by which the total amount under this
40 section and subdivision (3), subsection (c), section ten of
41 this article is in excess of the two percent received during
42 fiscal year one thousand nine hundred ninety-nine by a
43 county in which a racetrack other than a racetrack
44 described in paragraph (A) of this proviso is located and
45 where the racetrack has been located in a municipality
46 within the county since on or before the first day of
47 January, one thousand nine hundred ninety-nine, shall be
48 divided, if applicable, as follows:

49 (i) The county shall receive fifty percent of the excess
50 amount; and

51 (ii) The municipality shall receive fifty percent of the
52 excess amount; and

53 (C) This proviso shall not affect the amount to be
54 received under this subdivision by any county other than
55 a county described in paragraph (A) or (B) of this proviso;

56 (4) One half of one percent of net terminal income shall
57 be paid for and on behalf of all employees of the licensed
58 racing association by making a deposit into a special fund
59 to be established by the racing commission to be used for
60 payment into the pension plan for all employees of the
61 licensed racing association;

62 (5) The West Virginia thoroughbred development fund
63 created under section thirteen-b, article twenty-three,
64 chapter nineteen of this code and the West Virginia
65 greyhound breeding development fund created under

66 section ten, article twenty-three, chapter nineteen of this
67 code shall receive an equal share of a total of not less than
68 one and one-half percent of the net terminal income:
69 *Provided*, That for any racetrack which does not have a
70 breeder's program supported by the thoroughbred devel-
71 opment fund or the greyhound breeding development fund,
72 the one and one-half percent provided for in this subdivi-
73 sion shall be deposited in the special fund established by
74 the licensee and used for payment of regular purses, in
75 addition to other amounts provided for in subdivision (2)
76 of this subsection and article twenty-three, chapter
77 nineteen of this code;

78 (6) The West Virginia racing commission shall receive
79 one percent of the net terminal income which shall be
80 deposited and used as provided in section thirteen-c,
81 article twenty-three, chapter nineteen of this code;

82 (7) A licensee shall receive forty-two percent of net
83 terminal income;

84 (8) The tourism promotion fund established in section
85 twelve, article two, chapter five-b of this code shall receive
86 three percent of the net terminal income: *Provided*, That
87 for each fiscal year beginning after the thirtieth day of
88 June, two thousand four, this three percent of net terminal
89 income shall be distributed pursuant to the provisions of
90 paragraph (B), subdivision (8), subsection (c), section ten
91 of this article;

92 (9) On and after the first day of July, two thousand five,
93 four percent of net terminal income shall be deposited into
94 the workers' compensation debt reduction fund created in
95 section five, article two-d, chapter twenty-three of this
96 code: *Provided*, That in any fiscal year when the amount
97 of money generated by this subdivision together with the
98 total allocation transferred by the operation of subdivision
99 (9), subsection (c), section ten of this article totals eleven
100 million dollars, all subsequent distributions under this
101 subdivision (9) shall be deposited in the special fund

102 established by the licensee, and used for payment of
103 regular purses in addition to other amounts provided for
104 in article twenty-three, chapter nineteen of this code; and

105 (10) (A) One percent of the net terminal income shall be
106 deposited in equal amounts in the capitol dome and
107 improvements fund created under section two, article four,
108 chapter five-a of this code and cultural facilities and
109 capitol resources matching grant program fund created
110 under section three, article one of this chapter; and

111 (B) Notwithstanding any provision of paragraph (A) of
112 this subdivision to the contrary, for each fiscal year
113 beginning after the thirtieth day of June, two thousand
114 four, this one percent of net terminal income shall be
115 distributed pursuant to the provisions of subparagraph (ii),
116 paragraph (B), subdivision (9), subsection (c), section ten
117 of this article.

118 (b) The commission may establish orderly and effective
119 procedures for the collection and distribution of funds
120 under this section in accordance with the provisions of this
121 section and section ten of this article.

CHAPTER 33. INSURANCE.

ARTICLE 1. DEFINITIONS.

§33-1-2. Insurer.

1 Insurer is every person engaged in the business of
2 making contracts of insurance. Insurer includes private
3 carrier as that term is used in chapter twenty-three of this
4 code.

§33-1-10. Kinds of insurance defined.

1 The following definitions of kinds of insurance are not
2 mutually exclusive and, if reasonably adaptable thereto,
3 a particular coverage may be included under one or more
4 of such definitions:

5 (a) *Life insurance.* – Life insurance is insurance on
6 human lives including endowment benefits, additional
7 benefits in the event of death or dismemberment by
8 accident or accidental means, additional benefits for
9 disability and annuities.

10 (b) *Accident and sickness.* – Accident and sickness
11 insurance is insurance against bodily injury, disability or
12 death by accident or accidental means, or the expense
13 thereof, or against disability or expense resulting from
14 sickness and insurance relating thereto. Group credit
15 accident and health insurance may also include loss of
16 income insurance which is insurance against the failure of
17 a debtor to pay his or her monthly obligation due to
18 involuntary loss of employment. For the purposes of this
19 definition, involuntary loss of employment means the
20 debtor loses employment income (salary or wages) as a
21 result of unemployment caused by individual or mass
22 layoff, general strikes, labor disputes, lockout or termina-
23 tion by employer for other than willful or criminal miscon-
24 duct. Any or all of the above-mentioned perils may be
25 included in an insurance policy, at the discretion of the
26 policyholder.

27 (c) *Fire.* – Fire insurance is insurance on real or personal
28 property of every kind and interest therein, against loss or
29 damage from any or all hazard or cause, and against loss
30 consequential upon such loss or damage, other than
31 noncontractual liability for any such loss or damage. Fire
32 insurance shall also include miscellaneous insurance as
33 defined in paragraph (12), subdivision (e) of this section.

34 (d) *Marine insurance is insurance:*

35 (1) Against any and all kinds of loss or damage to
36 vessels, craft, aircraft, cars, automobiles and vehicles of
37 every kind, as well as all goods, freight, cargoes, merchan-
38 dise, effects, disbursements, profits, moneys, bullion,
39 precious stones, securities, choses in action, evidences of
40 debt, valuable papers, bottomry and respondentia interests

41 and all other kinds of property and interests therein, in
42 respect to, appertaining to or in connection with any and
43 **all risks or perils of navigation, transit or transportation,**
44 including war risks, on or under any seas or other waters,
45 on land (above or below ground), or in the air, or while
46 being assembled, packed, crated, baled, compressed or
47 similarly prepared for shipment or while awaiting the
48 same or during any delays, storage, transshipment, or
49 reshipment incident thereto, including marine builders'
50 risks and all personal property floater risks;

51 (2) Against any and all kinds of loss or damage to person
52 or to property in connection with or appertaining to a
53 marine, inlandmarine, transit or transportation insurance,
54 including liability for loss of or damage to either, arising
55 out of or in connection with the construction, repair,
56 operation, maintenance or use of the subject matter of
57 such insurance (but not including life insurance or surety
58 bonds nor insurance against loss by reason of bodily injury
59 to the person arising out of the ownership, maintenance or
60 use of automobiles);

61 (3) Against any and all kinds of loss or damage to
62 precious stones, jewels, jewelry, gold, silver and other
63 precious metals, whether used in business or trade or
64 otherwise and whether the same be in course of transpor-
65 tation or otherwise;

66 (4) Against any and all kinds of loss or damage to
67 **bridges, tunnels and other instrumentalities of transporta-**
68 **tion and communication (excluding buildings, their**
69 **furniture and furnishings, fixed contents and supplies held**
70 **in storage) unless fire, windstorm, sprinkler leakage, hail,**
71 **explosion, earthquake, riot or civil commotion or any or**
72 **all of them are the only hazards to be covered;**

73 (5) Against any and all kinds of loss or damage to piers,
74 wharves, docks and ships, excluding the risks of fire,
75 windstorm, sprinkler leakage, hail, explosion, earthquake,
76 riot and civil commotion and each of them;

77 (6) Against any and all kinds of loss or damage to other
78 aids to navigation and transportation, including dry docks
79 and marine railways, dams and appurtenant facilities for
80 control of waterways; and

81 (7) Marine protection and indemnity insurance, which is
82 insurance against, or against legal liability of the insured
83 for, loss, damage or expense arising out of, or incident to,
84 the ownership, operation, chartering, maintenance, use,
85 repair or construction of any vessel, craft or instrumental-
86 ity in use in ocean or inland waterways, including liability
87 of the insured for personal injury, illness or death or for
88 loss of or damage to the property of another person.

89 (e) *Casualty*. – Casualty insurance includes:

90 (1) Vehicle insurance, which is insurance against loss of
91 or damage to any land vehicle or aircraft or any draft or
92 riding animal or to property while contained therein or
93 thereon or being loaded therein or therefrom, from any
94 hazard or cause, and against any loss, liability or expense
95 resulting from or incident to ownership, maintenance or
96 use of any such vehicle, aircraft or animal; together with
97 insurance against accidental death or accidental injury to
98 individuals, including the named insured, while in,
99 entering, alighting from, adjusting, repairing or cranking,
100 or caused by being struck by any vehicle, aircraft or draft
101 or riding animal, if such insurance is issued as a part of
102 insurance on the vehicle, aircraft or draft or riding animal;

103 (2) Liability insurance, which is insurance against legal
104 liability for the death, injury or disability of any human
105 being, or for damage to property; and provisions for
106 medical, hospital, surgical, disability benefits to injured
107 persons and funeral and death benefits to dependents,
108 beneficiaries or personal representatives of persons killed,
109 irrespective of legal liability of the insured, when issued as
110 an incidental coverage with or supplemental to liability
111 insurance;

112 (3) Burglary and theft insurance, which is insurance
113 against loss or damage by burglary, theft, larceny, rob-
114 bery, forgery, fraud, vandalism, malicious mischief,
115 confiscation, or wrongful conversion, disposal or conceal-
116 ment, or from any attempt at any of the foregoing, includ-
117 ing supplemental coverages for medical, hospital, surgical
118 and funeral benefits sustained by the named insured or
119 other person as a result of bodily injury during the com-
120 mission of a burglary, robbery or theft by another; also
121 insurance against loss of or damage to moneys, coins,
122 bullion, securities, notes, drafts, acceptances or any other
123 valuable papers and documents resulting from any cause;

124 (4) Personal property floater insurance, which is insur-
125 ance upon personal effects against loss or damage from
126 any cause;

127 (5) Glass insurance, which is insurance against loss or
128 damage to glass, including its lettering, ornamentation and
129 fittings;

130 (6) Boiler and machinery insurance, which is insurance
131 against any liability and loss or damage to property or
132 interest resulting from accidents to or explosion of boilers,
133 pipes, pressure containers, machinery or apparatus and to
134 make inspection of and issue certificates of inspection
135 upon boilers, machinery and apparatus of any kind,
136 whether or not insured;

137 (7) Leakage and fire extinguishing equipment insurance,
138 which is insurance against loss or damage to any property
139 or interest caused by the breakage or leakage of sprinklers,
140 hoses, pumps and other fire extinguishing equipment or
141 apparatus, water mains, pipes and containers, or by water
142 entering through leaks or openings in buildings, and
143 insurance against loss or damage to such sprinklers, hoses,
144 pumps and other fire extinguishing equipment or appara-
145 tus;

146 (8) Credit insurance, which is insurance against loss or
147 damage resulting from failure of debtors to pay their

148 obligations to the insured. Credit insurance shall include
149 loss of income insurance which is insurance against the
150 failure of a debtor to pay his or her monthly obligation due
151 to involuntary loss of employment. For the purpose of this
152 definition, involuntary loss of employment means the
153 debtor loses employment income (salary or wages) as a
154 result of unemployment caused by individual or mass
155 layoff, general strikes, labor disputes, lockout or termina-
156 tion by employer for other than willful or criminal miscon-
157 duct; any or all of the above-mentioned perils may be
158 included in an insurance policy, at the discretion of the
159 policyholder;

160 (9) Malpractice insurance, which is insurance against
161 legal liability of the insured and against loss, damage or
162 expense incidental to a claim of such liability, and includ-
163 ing medical, hospital, surgical and funeral benefits to
164 injured persons, irrespective of legal liability of the
165 insured arising out of the death, injury or disablement of
166 any person, or arising out of damage to the economic
167 interest of any person, as the result of negligence in
168 rendering expert, fiduciary or professional service;

169 (10) Entertainment insurance, which is insurance
170 indemnifying the producer of any motion picture, televi-
171 sion, radio, theatrical, sport, spectacle, entertainment or
172 similar production, event or exhibition against loss from
173 interruption, postponement or cancellation thereof due to
174 death, accidental injury or sickness of performers, partici-
175 pants, directors or other principals;

176 (11) Mine subsidence insurance as provided for in article
177 thirty of this chapter;

178 (12) Miscellaneous insurance, which is insurance against
179 any other kind of loss, damage or liability properly a
180 subject of insurance and not within any other kind of
181 insurance as defined in this chapter, if such insurance is
182 not disapproved by the commissioner as being contrary to
183 law or public policy; and

184 (13) Federal flood insurance, which is insurance pro-
185 vided by the federal insurance administration or by
186 private insurers through the write your own program
187 within the national flood insurance program, instituted by
188 the federal insurance administration pursuant to the
189 provision of 42 U.S.C. §4071, on real or personal property
190 of every kind and interest therein, against loss or damage
191 from flood or mudslide and against loss consequential to
192 such loss or damage, other than noncontractual liability
193 for any loss or damage.

194 (14) Workers' compensation insurance, which is insur-
195 ance providing all compensation and benefits required by
196 chapter twenty-three of this code.

197 (f) *Surety*. – Surety insurance includes:

198 (1) Fidelity insurance, which is insurance guaranteeing
199 the fidelity of persons holding positions of public or
200 private trust;

201 (2) Insurance guaranteeing the performance of contracts,
202 other than insurance policies, and guaranteeing and
203 executing bonds, undertakings and contracts of surety
204 ship: *Provided*, That surety insurance does not include the
205 guaranteeing and executing of bonds by professional
206 bondsmen in criminal cases or by individuals not in the
207 business of becoming a surety for compensation upon
208 bonds;

209 (3) Insurance indemnifying banks, bankers, brokers,
210 financial or moneyed corporations or associations against
211 loss, resulting from any cause, of bills of exchange, notes,
212 bonds, securities, evidences of debt, deeds, mortgages,
213 warehouse receipts or other valuable papers, documents,
214 money, precious metals and articles made therefrom,
215 jewelry, watches, necklaces, bracelets, gems, precious and
216 semiprecious stones, including any loss while they are
217 being transported in armored motor vehicles or by messen-
218 ger, but not including any other risks of transportation or

219 navigation, and also insurance against loss or damage to
220 such an insured's premises or to his furnishings, fixtures,
221 equipment, safes and vaults therein, caused by burglary,
222 robbery, theft, vandalism or malicious mischief, or any
223 attempt to commit such crimes; and

224 (4) Title insurance, which is insurance of owners of
225 property or others having an interest therein, or liens or
226 encumbrances thereon, against loss by encumbrance,
227 defective title, invalidity or adverse claim to title.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-10. Rules and regulations.

1 (a) The commissioner is authorized to promulgate and
2 adopt rules relating to insurance as are necessary to
3 discharge his or her duties and exercise his or her powers
4 and to effectuate the provisions of this chapter, protect
5 and safeguard the interests of policyholders and the public
6 of this state.

7 (b) The commissioner is authorized to promulgate rules
8 necessary to discharge his or her duties relating to work-
9 ers' compensation insurance as set forth in chapter
10 twenty-three of this code, which shall be exempt from the
11 provisions of chapter twenty-nine-a, article three of this
12 code, except that these rules shall be filed with the Secre-
13 tary of State's Office.

14 (c) Prior to assuming regulatory authority over workers'
15 compensation insurance pursuant to article two-c, chapter
16 twenty-three of this code, the commissioner shall review
17 and revise all applicable rules to reflect the assumption of
18 this new regulatory authority: *Provided*, That all such
19 revisions shall be exempt from the provisions of chapter
20 twenty-nine-a, article three, except that the amended rules
21 shall be filed with the Secretary of State's Office.

§33-2-20. Authority of insurance commissioner to regulate workers compensation industry; authority of

**insurance commissioner to administer chapter
twenty-three.**

1 (a) Upon the termination of the Workers' Compensation
2 Commission pursuant to chapter twenty-three of this code,
3 the powers and duties heretofore imposed upon the Work-
4 ers' Compensation Commission as they relate to general
5 administration of the provisions of chapter twenty-three
6 of this code are hereby transferred to and imposed upon
7 the insurance commissioner.

8 (b) Unless otherwise specified in chapter twenty-three,
9 upon termination of the Workers' Compensation Commis-
10 sion, the duties imposed upon the Workers' Compensation
11 Commission as they relate to the award and payment of
12 disability and death benefits and the review of claims in
13 articles four and five, chapter twenty-three of this code,
14 will be imposed upon the employers mutual insurance
15 company established pursuant to article two-c, chapter
16 twenty-three of this code, a private carrier offering work-
17 ers' compensation insurance in this state and self-insured
18 employers. Whenever reference is made to the Workers'
19 Compensation Commissioner in those articles, the duty
20 prescribed shall apply to the employers mutual insurance
21 company, a private carrier or self-insured employer, as
22 applicable.

23 (c) From the effective date of this enactment, the
24 insurance commissioner shall regulate all insurers licensed
25 to transact workers' compensation insurance in this state
26 and all of the provisions of this chapter shall apply to such
27 insurers, unless otherwise exempted by statute.

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§33-41-2. Definitions.

1 As used in this article:

2 (1) "Benefits" mean money payments, goods, services or
3 other thing of value paid in response to a claim filed with
4 an insurer based upon a policy of insurance;

5 (2) "Business of insurance" means the writing of insur-
6 ance, including the writing of workers' compensation
7 insurance under the provisions of chapter twenty-three of
8 this code, self-insurance by an employer or employer
9 group for workers' compensation risk including the risk of
10 catastrophic injuries under the provisions of chapter
11 twenty-three of this code or the reinsuring of risks by an
12 insurer, including acts necessary or incidental to writing
13 insurance or reinsuring risks and the activities of persons
14 who act as or are officers, directors, agents or employees
15 of insurers, or who are other persons authorized to act on
16 their behalf;

17 (3) "Claim" means an application or request for payment
18 or benefits provided under the terms of a policy of insur-
19 ance;

20 (4) "Commissioner" means the insurance commissioner
21 of West Virginia or his or her designee;

22 (5) "Health care provider" means a person, partnership,
23 corporation, facility or institution licensed by, or certified
24 in, this state or another state, to provide health care or
25 professional health care services, including, but not
26 limited to, a physician, osteopathic physician, hospital,
27 dentist, registered or licensed practical nurse, optometrist,
28 pharmacist, podiatrist, chiropractor, physical therapist or
29 psychologist;

30 (6) "Insurance" means a contract or arrangement in
31 which a person undertakes to:

32 (A) Pay or indemnify another person as to loss from
33 certain contingencies called "risks", including through
34 reinsurance;

35 (B) Pay or grant a specified amount or determinable
36 benefit to another person in connection with ascertainable
37 risk contingencies;

38 (C) Pay an annuity to another person;

39 (D) Act as surety; or

40 (E) Self-insurance for workers' compensation risk
41 including the risk of catastrophic injuries under the
42 provisions of chapter twenty-three of this code.

43 (7) "Insurer" means a person entering into arrangements
44 or contracts of insurance or reinsurance. Insurer includes,
45 but is not limited to, any domestic or foreign stock com-
46 pany, mutual company, mutual protective association,
47 farmers' mutual fire companies, fraternal benefit society,
48 reciprocal or interinsurance exchange, nonprofit medical
49 care corporation, nonprofit health care corporation,
50 nonprofit hospital service association, nonprofit dental
51 care corporation, health maintenance organization,
52 captive insurance company, risk retention group or other
53 insurer, regardless of the type of coverage written, includ-
54 ing the writing of workers' compensation insurance or self
55 insurance under the provisions of chapter twenty-three of
56 this code, benefits provided or guarantees made by each.
57 A person is an insurer regardless of whether the person is
58 acting in violation of laws requiring a certificate of
59 authority or regardless of whether the person denies being
60 an insurer;

61 (8) "Person" means an individual, a corporation, a
62 limited liability company, a partnership, an association, a
63 joint stock company, a trust, trustees, an unincorporated
64 organization, or any similar business entity or any combi-
65 nation of the foregoing. "Person" also includes hospital
66 service corporations, medical service corporations and
67 dental service corporations as defined in article twenty-
68 four of this chapter, health care corporations as defined in
69 article twenty-five of this chapter, or a health mainte-
70 nance organization organized pursuant to article
71 twenty-five-a of this chapter;

72 (9) "Policy" means an individual or group policy, group
73 certificate, contract or arrangement of insurance or
74 reinsurance, coverage by a self-insured employer or

75 employer group for its workers' compensation risk includ-
76 ing its risk of catastrophic injuries or reinsurance, affect-
77 ing the rights of a resident of this state or bearing a
78 reasonable relation to this state, regardless of whether
79 delivered or issued for delivery in this state;

80 (10) "Reinsurance" means a contract, binder of coverage
81 (including placement slip) or arrangement under which an
82 insurer procures insurance for itself in another insurer as
83 to all or part of an insurance risk of the originating
84 insurer;

85 (11) "Statement" means any written or oral representa-
86 tion made to any person, insurer or authorized agency. A
87 statement includes, but is not limited to, any oral report or
88 representation; any insurance application, policy, notice or
89 statement; any proof of loss, bill of lading, receipt for
90 payment, invoice, account, estimate of property damages,
91 or other evidence of loss, injury or expense; any bill for
92 services, diagnosis, prescription, hospital or doctor record,
93 X-ray, test result or other evidence of treatment, services
94 or expense; and any application, report, actuarial study,
95 rate request or other document submitted or required to be
96 submitted to any authorized agency. A statement also
97 includes any written or oral representation recorded by
98 electronic or other media; and

99 (12) "Unit" means the insurance fraud unit established
100 pursuant to the provisions of this article acting collectively
101 or by its duly authorized representatives.

ARTICLE 41. PRIVILEGES AND IMMUNITY.

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

1 (a) There is established the West Virginia insurance
2 fraud unit within the office of the insurance commissioner
3 of West Virginia. The commissioner may employ full-time
4 supervisory, legal and investigative personnel for the unit,
5 who shall be qualified by training and experience in the

6 areas of detection, investigation or prosecution of fraud
7 within and against the insurance industry to perform the
8 duties of their positions. The director of the fraud unit
9 shall be a full-time position and shall be appointed by the
10 commissioner and serve at his or her will and pleasure.
11 The commissioner shall provide office space, equipment,
12 supplies, clerical and other staff that is necessary for the
13 unit to carry out its duties and responsibilities under this
14 article.

15 (b) The fraud unit may in its discretion:

16 (1) Initiate inquiries and conduct investigations when
17 the unit has cause to believe violations of the provisions of
18 this chapter, the provisions of chapter twenty-three, the
19 provisions of article three, chapter sixty-one of this code
20 relating to the business of insurance have been or are
21 being committed;

22 (2) Review reports or complaints of alleged fraud related
23 to the business of insurance activities from federal, state
24 and local law-enforcement and regulatory agencies,
25 persons engaged in the business of insurance and the
26 general public to determine whether the reports require
27 further investigation; and

28 (3) Conduct independent examinations of alleged
29 fraudulent activity related to the business of insurance and
30 undertake independent studies to determine the extent of
31 fraudulent insurance acts.

32 (c) The insurance fraud unit may:

33 (1) Employ and train personnel to achieve the purposes
34 of this article and to employ legal counsel, investigators,
35 auditors and clerical support personnel and other person-
36 nel as the commissioner determines necessary from time to
37 time to accomplish the purposes of this article;

38 (2) Inspect, copy or collect records and evidence;

39 (3) Serve subpoenas issued by grand juries and trial
40 courts in criminal matters;

41 (4) Share records and evidence with federal, state or
42 local law-enforcement or regulatory agencies, and enter
43 into interagency agreements;

44 (5) Make criminal referrals to the county prosecutors;

45 (6) Conduct investigations outside this state. If the
46 information the insurance fraud unit seeks to obtain is
47 located outside this state, the person from whom the
48 information is sought may make the information available
49 to the insurance fraud unit to examine at the place where
50 the information is located. The insurance fraud unit may
51 designate representatives, including officials of the state
52 in which the matter is located, to inspect the information
53 on behalf of the insurance fraud unit, and the insurance
54 fraud unit may respond to similar requests from officials
55 of other states;

56 (7) The fraud unit may initiate investigations and
57 participate in the development of, and if necessary, the
58 prosecution of any health care provider, including a
59 provider of rehabilitation services, suspected of fraudulent
60 activity related to the business of insurance;

61 (8) Specific personnel, designated by the commissioner,
62 shall be permitted to operate vehicles owned or leased for
63 the state displaying Class A registration plates;

64 (9) Notwithstanding any provision of this code to the
65 contrary, specific personnel designated by the commis-
66 sioner may carry firearms in the course of their official
67 duties after meeting specialized qualifications established
68 by the governor's committee on crime, delinquency and
69 correction, which shall include the successful completion
70 of handgun training provided to law-enforcement officers
71 by the West Virginia state police: *Provided*, That nothing
72 in this subsection shall be construed to include any person
73 designated by the commissioner as a law-enforcement

74 officer as that term is defined by the provisions of section
75 one, article twenty-nine, chapter thirty of this code; and

76 (10) The insurance fraud unit shall not be subject to the
77 provisions of article nine-a, chapter six of this code and
78 the investigations conducted by the insurance fraud unit
79 and the materials placed in the files of the unit as a result
80 of any such investigation are exempt from public disclosure
81 under the provisions of chapter twenty-nine-b of this
82 code.

§33-41-11. Fraudulent claims to insurance companies.

1 (a) Any person who knowingly and willfully and with
2 intent to defraud submits a materially false statement in
3 support of a claim for insurance benefits or payment
4 pursuant to a policy of insurance or who conspires to do so
5 is guilty of a crime and is subject to the penalties set forth
6 in the provisions of this section.

7 (b) Any person who commits a violation of the provisions
8 of subsection (a) of this section where the benefit sought
9 exceeds one thousand dollars in value is guilty of a felony
10 and, upon conviction thereof, shall be confined in a
11 correctional facility for not less than one nor more than
12 ten years, fined not more than ten thousand dollars, or
13 both or in the discretion of the circuit court confined in a
14 county or regional jail for not more than one year and so
15 fined.

16 (c) Any person who commits a violation of the provisions
17 of subsection (a) of this section where the benefit sought is
18 one thousand dollars or less in value, is guilty of a misde-
19 meanor and, upon conviction thereof, shall be confined in
20 a county or regional jail for not more than one year, fined
21 not more than two thousand five hundred dollars, or both.

22 (d) Any person convicted of a violation of this section is
23 subject to the restitution provisions of article eleven-a,
24 chapter sixty-one of this code.

25 (e) In addition to the foregoing provisions, the offenses
26 enumerated in sections twenty-four-e through twenty-
27 four-h, inclusive, article three, chapter sixty-one of this
28 code are applicable to matters concerning workers'
29 compensation insurance.

30 (f) The circuit court may award to the unit or other
31 law-enforcement agency investigating a violation of this
32 section or other criminal offense related to the business of
33 insurance its cost of investigation.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24e. Omission to subscribe for workers' compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

1 (1) Failure to subscribe:

2 (A) Responsible person. Any person who individually or
3 as owner, partner, president, other officer, or manager of
4 a sole proprietorship, firm, partnership, company, corpo-
5 ration or association, who, as a person who is responsible
6 for and who is required by specific assignment, duty or
7 legal duty, which is either expressed or inherent in laws
8 which require the employer's principals to be informed
9 and to know the facts and laws affecting the business
10 organization and to make internal policy and decisions
11 which ensure that the individual and organization comply
12 with the general laws and provisions of chapter twenty-
13 three of this code, knowingly and willfully fails to sub-
14 scribe for and maintain workers' compensation insurance
15 shall be guilty of a felony and, upon conviction, shall be
16 imprisoned in a state correctional facility not less than one
17 nor more than ten years, or in the discretion of the court,
18 be confined in a county or regional jail not more than one

19 year and shall be fined not more than two thousand five
20 hundred dollars.

21 (B) Any corporation, association or partnership who, as
22 an employer as defined in chapter twenty-three of this
23 code, knowingly and willfully fails to subscribe for and
24 maintain workers' compensation insurance shall be guilty
25 of a felony and, upon conviction, shall be fined not less
26 than two thousand five hundred dollars nor more than ten
27 thousand dollars.

28 (2) Failure to pay:

29 (A) Any person who individually or as owner, partner,
30 president, other officer or manager of a sole proprietor-
31 ship, firm, partnership, company, corporation or associa-
32 tion, who, as a responsible person as defined in this
33 section, knowingly and willfully fails to make premium
34 tax payments to the workers' compensation fund or
35 premiums to a private carrier as required by chapter
36 twenty-three of this code, shall be guilty of the larceny of
37 the premium owed and, if the amount is one thousand
38 dollars or more, such person shall be guilty of a felony and,
39 upon conviction thereof, shall be imprisoned in a state
40 correctional facility not less than one nor more than ten
41 years or, in the discretion of the court, be confined in a
42 county or regional jail not more than one year and shall be
43 fined not more than two thousand five hundred dollars. If
44 the amount is less than one thousand dollars, such person
45 shall be guilty of a misdemeanor and, upon conviction
46 thereof, shall be confined in a county or regional jail for a
47 term not to exceed one year or fined an amount not to
48 exceed two thousand five hundred dollars, or both, in the
49 discretion of the court.

50 (B) Any corporation, association, company or partner-
51 ship which, as an employer as defined in chapter twenty-
52 three of this code, knowingly and willfully fails to make
53 premium tax payments to the workers' compensation fund
54 or premiums to a private carrier as required by chapter

55 twenty-three of this code shall be guilty of the larceny of
56 the premium owed, and, if the amount is one thousand
57 dollars or more, such corporation, association, company or
58 partnership shall be guilty of a felony and, upon conviction
59 thereof, shall be fined not less than two thousand five
60 hundred dollars nor more than ten thousand dollars. If the
61 amount is less than one thousand dollars, such corporation,
62 association, company or partnership shall be guilty of
63 a misdemeanor and, upon conviction thereof, shall be fined
64 an amount not to exceed two thousand five hundred
65 dollars.

66 (C) Any person who individually or as owner, partner,
67 president, other officer, or manager of a sole proprietor-
68 ship, firm, partnership, company, corporation or association,
69 who, as a responsible person, as defined in this
70 section, knowingly and willfully and with fraudulent
71 intent sells, transfers or otherwise disposes of substantially
72 all of the employer's assets for the purpose of evading the
73 payment of workers' compensation premium taxes to the
74 workers' compensation fund, or premiums to a private
75 carrier as required by chapter twenty-three of this code,
76 shall be guilty of the larceny of the premium owed and, if
77 the amount is one thousand dollars or more, such person
78 shall be guilty of a felony and, upon conviction thereof,
79 shall be imprisoned in a state correctional facility not less
80 than one nor more than ten years or, in the discretion of
81 the court, be confined in a county or regional jail not more
82 than one year and shall be fined not more than two
83 thousand five hundred dollars. If the amount is less than
84 one thousand dollars, such person shall be guilty of a
85 misdemeanor and, upon conviction thereof, shall be
86 confined in a county or regional jail for a term not to
87 exceed one year or fined an amount not to exceed two
88 thousand five hundred dollars, or both, in the discretion of
89 the court.

90 (D) Any corporation, association, company or partner-
91 ship which, as an employer as defined in chapter twenty-

92 three of this code, knowingly and willfully and with
93 fraudulent intent sells, transfers or otherwise disposes of
94 substantially all of the employer's assets for the purpose of
95 evading the payment of workers' compensation premium
96 taxes to the workers' compensation fund, or premiums to
97 a private carrier as required by chapter twenty-three of
98 this code shall be guilty of the larceny of the premium
99 owed, and, if the amount is one thousand dollars or more,
100 such corporation, association, company or partnership
101 shall be guilty of a felony and, upon conviction thereof,
102 shall be fined not less than two thousand five hundred
103 dollars nor more than ten thousand dollars. If the amount
104 is less than one thousand dollars, such corporation,
105 association, company or partnership shall be guilty of a
106 misdemeanor and, upon conviction thereof, shall be fined
107 an amount not to exceed two thousand five hundred
108 dollars.

109 (3) Failure to file premium tax reports:

110 (A) Any person who individually or as owner, partner,
111 president, other officer, or manager of a sole proprietor-
112 ship, firm, partnership, company, corporation or associa-
113 tion, who, as a responsible person as defined in this
114 section, knowingly and willfully fails to file a premium tax
115 report with the workers' compensation fund or a premium
116 report to a private carrier as required by chapter twenty-
117 three of this code, shall be guilty of a felony and, upon
118 conviction thereof, shall be imprisoned in a state correc-
119 tional facility not less than one nor more than ten years, or
120 in the discretion of the court, be confined in a county or
121 regional jail for a term not to exceed one year and shall be
122 fined not more than two thousand five hundred dollars.

123 (B) Any corporation, association, company or partner-
124 ship which, as an employer as defined in chapter twenty-
125 three of this code, knowingly and willfully fails to file a
126 premium tax report with the workers' compensation fund
127 or a premium report to a private carrier as required by
128 chapter twenty-three of this code, shall be guilty of a

129 felony and, upon conviction thereof, shall be fined not less
130 than two thousand five hundred dollars nor more than ten
131 thousand dollars.

132 (4) Failure to file other reports:

133 (A) Any person, individually or as owner, partner,
134 president or other officer, or manager of a sole proprietor-
135 ship, firm, partnership, company, corporation or associa-
136 tion who, as a responsible person as defined in this section,
137 knowingly and willfully fails to file any report, other than
138 a premium tax report, required by such chapter shall be
139 guilty of a misdemeanor and, upon conviction thereof,
140 shall be confined in a county or regional jail for a term not
141 to exceed one year or fined an amount not to exceed two
142 thousand five hundred dollars, or both, in the discretion of
143 the court.

144 (B) Any corporation, association, company or partner-
145 ship which, as an employer as defined in chapter twenty-
146 three of this code, knowingly and willfully fails to file any
147 report, other than a premium tax report, with the workers'
148 compensation fund or insurance commissioner as required
149 by chapter twenty-three of this code, shall be guilty of a
150 misdemeanor and, upon conviction thereof, shall be fined
151 an amount not to exceed two thousand five hundred
152 dollars.

153 (5) False testimony or statements:

154 Any person, individually or as owner, partner, president,
155 other officer, or manager of a sole proprietorship, firm,
156 partnership, company, corporation or association who, as
157 a responsible person as defined in this section, knowingly
158 and willfully makes a false report or statement under oath,
159 affidavit, certification or by any other means respecting
160 any information required to be provided under chapter
161 twenty-three of this code shall be guilty of a felony and,
162 upon conviction thereof, shall be confined in a state
163 correctional facility for a definite term of imprisonment

164 which is not less than one year nor more than three years
165 or fined not less than one thousand dollars nor more than
166 ten thousand dollars, or both, in the discretion of the
167 court. In addition to any other penalty imposed, the court
168 shall order any defendant convicted under this section to
169 make full restitution of all moneys paid by or due to the
170 workers' compensation fund, insurance commissioner or
171 private carrier as the result of a violation of this section.
172 The restitution ordered shall constitute a judgment against
173 the defendant and in favor of the state of West Virginia
174 workers' compensation commission, insurance commis-
175 sioner or private carrier.

176 (6) Asset forfeiture:

177 (A) The court, in imposing sentence on a person or entity
178 convicted of an offense under this section, shall order the
179 person or entity to forfeit property, real or personal, that
180 constitutes or is derived, directly or indirectly, from gross
181 proceeds traceable to the commission, insurance commis-
182 sioner or private carrier of the offense. Any person or
183 entity convicted under this section shall pay the costs of
184 asset forfeiture.

185 (B) For purposes of subdivision (A) of this subsection, the
186 term "payment of the costs of asset forfeiture" means:

187 (i) The payment of any expenses necessary to seize,
188 detain, inventory, safeguard, maintain, advertise, sell or
189 dispose of property under seizure, detention, forfeiture or
190 of any other necessary expenses incident to the seizure,
191 detention, forfeiture, or disposal of such property, includ-
192 ing payment for:

193 (I) Contract services;

194 (II) The employment of outside contractors to operate
195 and manage properties or provide other specialized
196 services necessary to dispose of such properties in an effort
197 to maximize the return from such properties; and

198 (III) Reimbursement of any state or local agency for any
199 expenditures made to perform the functions described in
200 this subparagraph;

201 (ii) The compromise and payment of valid liens and
202 mortgages against property that has been forfeited, subject
203 to the discretion of the workers' compensation fund to
204 determine the validity of any such lien or mortgage and
205 the amount of payment to be made, and the employment
206 of attorneys and other personnel skilled in state real estate
207 law as necessary;

208 (iii) Payment authorized in connection with remission or
209 mitigation procedures relating to property forfeited; and

210 (iv) The payment of state and local property taxes on
211 forfeited real property that accrued between the date of
212 the violation giving rise to the forfeiture and the date of
213 the forfeiture order.

214 (7) Venue:

215 Venue for prosecution of any violation of this section
216 shall be either the county in which the defendant's princi-
217 pal business operations are located or in Kanawha County
218 where the workers' compensation fund is located.

**§61-3-24f. Wrongfully seeking workers' compensation; false
testimony or statements; penalties; venue.**

1 (1) Any person who shall knowingly and with fraudulent
2 intent secure or attempt to secure compensation from the
3 workers' compensation fund, a private carrier or from a
4 self-insured employer:

5 (A) That is larger in amount than that to which he or she
6 is entitled; or

7 (B) That is longer in term than that to which he or she is
8 entitled; or

9 (C) To which he or she is not entitled, shall be guilty of
10 a larceny and, if the amount is one thousand dollars or

11 more, such person shall be guilty of a felony and, upon
12 conviction thereof, shall be imprisoned in a state correc-
13 tional facility not less than one nor more than ten years or,
14 in the discretion of the court, be confined in a county or
15 regional jail not more than one year and shall be fined not
16 more than two thousand five hundred dollars. If the
17 amount is less than one thousand dollars, such person shall
18 be guilty of a misdemeanor and, upon conviction thereof,
19 shall be confined in a county or regional jail for a term not
20 to exceed one year or fined an amount not to exceed two
21 thousand five hundred dollars, or both, in the discretion of
22 the court.

23 (2) Any person who shall knowingly and willfully make
24 a false report or statement under oath, affidavit, certifica-
25 tion or by any other means respecting any information
26 required to be provided under chapter twenty-three of this
27 code shall be guilty of a felony and, upon conviction
28 thereof, shall be confined in a state correctional facility for
29 a definite term of imprisonment which is not less than one
30 year nor more than three years or fined not less than one
31 thousand dollars nor more than ten thousand dollars, or
32 both, in the discretion of the court.

33 (3) In addition to any other penalty imposed, the court
34 shall order any person convicted under this section to
35 make full restitution of all moneys paid by the workers'
36 compensation fund, private carrier or self-insured em-
37 ployer as the result of a violation of this section. The
38 restitution ordered shall constitute a judgment against the
39 defendant and in favor of the state of West Virginia
40 workers' compensation commission, private carrier or
41 self-insured employer.

42 (4) If the person so convicted is receiving compensation
43 from such fund, private carrier or employer, he or she
44 shall, from and after such conviction, cease to receive such
45 compensation as a result of any alleged injury or disease.

46 Venue for prosecution of any violation of this section
47 shall either be the county in which the claimant resides,

48 the county in which the claimant is employed or working,
49 or in Kanawha County where the workers' compensation
50 fund is located.

**§61-3-24g. Workers' compensation health care offenses; fraud;
theft or embezzlement; false statements; penal-
ties; notice; prohibition against providing future
services; penalties; asset forfeiture; venue.**

1 (1) Any person who knowingly and willfully executes, or
2 attempts to execute, a scheme or artifice:

3 (A) To defraud the workers' compensation fund, private
4 carrier or a self-insured employer in connection with the
5 delivery of or payment for workers' compensation health
6 care benefits, items or services;

7 (B) To obtain, by means of false or fraudulent pretenses,
8 representations, or promises any of the money or property
9 owned by or under the custody or control of the workers'
10 compensation fund, private carrier or a self-insured
11 employer in connection with the delivery of or payment for
12 workers' compensation health care benefits, items or
13 services; or

14 (C) To make any charge or charges against any injured
15 employee or any other person, firm or corporation which
16 would result in a total charge for the treatment or service
17 rendered in excess of the maximum amount set forth in the
18 workers' compensation commission's schedule of maxi-
19 mum reasonable amounts to be paid for the treatment or
20 services issued pursuant to subsection (a), section three
21 article four, chapter twenty-three of this code is guilty of
22 a felony and, upon conviction thereof, shall be imprisoned
23 in a state correctional facility not less than one year nor
24 more than ten years or, in the discretion of the court, be
25 confined in a county or regional jail not more than one
26 year and shall be fined not more than two thousand five
27 hundred dollars.

28 (2) Any person who, in any matter involving a health
29 care program related to workers' compensation insurance,
30 knowingly and willfully:

31 (A) Falsifies, conceals or covers up by any trick, scheme
32 or device a material fact; or

33 (B) Makes any materially false, fictitious or fraudulent
34 statement or representation, or makes or uses any materi-
35 ally false writing or document knowing the same to
36 contain any materially false, fictitious or fraudulent
37 statement or entry, is guilty of a felony and, upon convic-
38 tion thereof, shall be confined in a state correctional
39 facility for a definite term of imprisonment which is not
40 less than one year nor more than three years or fined not
41 less than one thousand dollars nor more than ten thousand
42 dollars, or both, in the discretion of the court.

43 (3) Any person who willfully embezzles, steals or other-
44 wise unlawfully converts to the use of any person other
45 than the rightful owner, or intentionally misapplies any of
46 the moneys, funds, securities, premiums, credits, property
47 or other assets of a health care program related to the
48 provision of workers' compensation insurance, is guilty of
49 a felony and, upon conviction thereof, shall be imprisoned
50 in a state correctional facility for not less than one year
51 nor more than ten years or fined not less than ten thousand
52 dollars, or both, in the discretion of the court.

53 (4) Any health care provider who fails, in violation of
54 subsection (5) of this section to post a notice, in the form
55 required by the workers' compensation commission, in the
56 provider's public waiting area that the provider cannot
57 accept any patient whose treatment or other services or
58 supplies would ordinarily be paid for from the workers'
59 compensation fund, private carrier or by a self-insured
60 employer unless the patient consents, in writing, prior to
61 the provision of the treatment or other services or supplies,
62 to make payment for that treatment or other services or
63 supplies himself or herself, is guilty of a misdemeanor and,

64 upon conviction thereof, shall be fined one thousand
65 dollars.

66 (5) Any person convicted under the provisions of this
67 section shall, after such conviction, be barred from
68 providing future services or supplies to injured employees
69 for the purposes of workers' compensation and shall cease
70 to receive payment for services or supplies. In addition to
71 any other penalty imposed, the court shall order any
72 defendant convicted under this section to make full
73 restitution of all moneys paid by or due to the workers'
74 compensation fund, private carrier or self-insured em-
75 ployer as the result of a violation of this section. The
76 restitution ordered shall constitute a judgment against the
77 defendant and in favor of the state of West Virginia
78 workers' compensation commission, insurance commis-
79 sioner, private carrier or self-insured employer.

80 (6) (A) The court, in imposing sentence on a person
81 convicted of an offense under this section, shall order the
82 person to forfeit property, real or personal, that consti-
83 tutes or is derived, directly or indirectly, from gross
84 proceeds traceable to the commission of the offense. Any
85 person convicted under this section shall pay the costs of
86 asset forfeiture.

87 (B) For purposes of subdivision (A) of this subsection, the
88 term "payment of the costs of asset forfeiture" means:

89 (i) The payment of any expenses necessary to seize,
90 detain, inventory, safeguard, maintain, advertise, sell or
91 dispose of property under seizure, detention or forfeiture,
92 or of any other necessary expenses incident to the seizure,
93 detention, forfeiture or disposal of the property, including
94 payment for:

95 (I) Contract services;

96 (II) The employment of outside contractors to operate
97 and manage properties or provide other specialized

98 services necessary to dispose of the properties in an effort
99 to maximize the return from the properties; and

100 (III) Reimbursement of any state or local agency for any
101 expenditures made to perform the functions described in
102 this subparagraph;

103 (ii) The compromise and payment of valid liens and
104 mortgages against property that has been forfeited, subject
105 to the discretion of the workers' compensation fund to
106 determine the validity of the lien or mortgage and the
107 amount of payment to be made, and the employment of
108 attorneys and other personnel skilled in state real estate
109 law as necessary;

110 (iii) Payment authorized in connection with remission or
111 mitigation procedures relating to property forfeited; and

112 (iv) The payment of state and local property taxes on
113 forfeited real property that accrued between the date of
114 the violation giving rise to the forfeiture and the date of
115 the forfeiture order.

116 (7) Venue for prosecution of any violation of this section
117 shall be either the county in which the defendant's princi-
118 pal business operations are located or in Kanawha County
119 where the workers' compensation fund is located.

**§61-3-24h. Providing false documentation to workers' compen-
sation to the insurance commissioner or a private
carrier of workers' compensation insurance;
altering documents or certificates from workers'
compensation; penalties; venue.**

1 (1) Any person, firm, partnership, company, corporation
2 association or medical provider who submits false docu-
3 mentation to workers' compensation, the insurance
4 commissioner or a private carrier of workers' compensa-
5 tion insurance with the intent to defraud the workers'
6 compensation commission, the insurance commissioner or
7 a private carrier of workers' compensation insurance shall

8 be guilty of a misdemeanor and, upon conviction thereof,
9 shall be confined in jail for a term not to exceed one year
10 or fined an amount not to exceed two thousand five
11 hundred dollars, or both, in the discretion of the court.

12 (2) Any person, firm, partnership, company, corporation,
13 association or medical provider who alters, falsifies,
14 defaces, changes or modifies any certificate or other
15 document which would indicate good standing with the
16 workers' compensation commission, insurance commis-
17 sioner or private carrier concerning workers' compensa-
18 tion insurance coverage or endorsement by workers'
19 compensation for medical services shall be guilty of a
20 misdemeanor and, upon conviction thereof, shall be
21 confined in jail for a term not to exceed one year or fined
22 an amount not to exceed two thousand five hundred
23 dollars, or both, in the discretion of the court.

24 (3) Venue for prosecution of any violation of this section
25 shall be either the county in which the claimant resides, a
26 defendant's principal business operations are located, or
27 in Kanawha County where the workers' compensation
28 fund is located.

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

Randy White
.....
Chairman Senate Committee

W. Reed Burr
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Doreen Holmes
.....
Clerk of the Senate

Bryson E. Smith
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

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

The within *is approved* this the *16th*
Day of *February*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 2/7/05

Time 3:45pm